***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 19th February, 2015**

W.P.(C) No.2992/2013, CM No.5648/2013 (for stay) and CM No. 12086/2013 (u/O 1 R 10 CPC).

COMMON CAUSE ..... Petitioner

Through: Mr. Raghav Shankar with Ms. Malavika Lal, Adv.

Versus

SUBHASH JAIN, EX-COUNCILLOR & ORS ..... Respondents

Through: Mr. Ashish Mohan with Mr. Rohit Gandhi and Mr. Mehak Kanwar, Adv. for R-1.
Mr. B.C. Bhatt with Mr. Sunil Kumar, Adv. for R-3.
Mr. Rajesh Pathak, Adv. for R-4.
Mr. Vinay Gupta & Mr. R. Ravi, Advs. for R-7.
Mr. M. Tripathi, Adv. for R-8.
Inspr. Raj Kumar Saha, SHO/P.S. Madhu Vihar.
Ms. Zubeda Begum, Adv. for R-9 to 11.

CORAM :-
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This petition under Article 226 of the Constitution of India, filed as a Public Interest Litigation (PIL) impugns (as illegal, null, void and *ultra vires* the Constitution of India), the orders of the respondent no.9, Lieutenant

Governor of Delhi, acting as Competent Authority under the Delhi Lokayukta and Upalokayukta Act, 1995, rejecting the recommendations contained in the reports of the Lokayukta, Delhi with respect to the respondents no.1 to 8 i.e. (i) Shri Subhash Jain, (ii) Ms. Anita Koli, (iii) Smt. Sateshwari Joshi, (iv) Smt. Manju Gupta, (v) Smt. Beena Thakuria, (vi) Smt. Jaishree Panwar, (vii) Shri Ravi Prakash Sharma and (viii) Shri Ajit Singh Tokas, all ex-Municipal Councillors of Delhi. The petition also seeks a direction for forwarding the said reports of the Lokayukta to the Commissioner of Police for consideration, evaluation and further action in accordance with law.

2. Notice of the petition was issued. Counter affidavits have been filed by the respondents no.1, 3, 4, 8, 9 & 10 and to which rejoinders have been filed by the petitioner. The respondent no.8 has also filed an application for being deleted from the array of respondents contending that the Lokayukta in his report qua him has only recommended issuance of an advisory caution and the continuance of the writ petition against him may be misused by his political opponents to harm his interest in the ensuing elections to the State Assembly. The respondents no.9 & 10 have also filed an additional affidavit.

3. When the matter was listed before the Court on 6th March, 2014 it was the contention of the counsel for the respondents that the judgment of the

Division Bench of this Court in ***Sunita Bhardwaj Vs. Smt. Shiela Dixit*** 203 (2013) DLT 743 covers all the issues sought to be urged in this petition. It was however the contention of the counsel for the petitioner that the present petition was distinguishable from the said judgment.

4. The case of the petitioner is:-

(i) that the Lokayukta, Delhi on 7th December, 2011 took *suo motu* cognizance of the newspaper report of the same date of the findings of a sting operation bringing to light the involvement of some of the Municipal Councillors of Delhi in negotiations for facilitating illegal and unauthorized constructions for illegal gratification;

(ii) that the Lokayukta, after conducting inquiry in the matter as provided for in the Act, issued separate reports qua each Municipal Councillor (respondents No.1 to 8) under Section 12(1) of the Act, communicating his findings and recommendations to the Competent Authority being the Lieutenant Governor; in majority of the cases, the finding of the Lokayukta was that the Municipal Councillor had been eager and willing participant in contemplating

blatant violation of the law and in accepting illegal gratification for circumventing and violating legal provisions; some of the Municipal Councillors were also found to have demonstrated a willingness to accept illegal gratification with a view to disbursing the same to other officials involved in perpetuating the illegalities; the Lokayukta accordingly concluded that the material should be forwarded to the appropriate investigating agency for further action in this regard;

(iii) that the Lieutenant Governor, as the Competent Authority under the Act, adopted a procedure alien to the statutory scheme and effectively conducted a *de novo* hearing qua each of the Municipal Councillors, by issuing notice affording personal hearing to them; this procedure is contrary to Section 12(2) of the Act;

(iv) the fresh hearing afforded by the Lieutenant Governor to each of the Municipal Councillors served as the basis for the Lieutenant Governor to reject the course of action proposed by the Lokayukta in each of the cases;

(v) that the orders of the Lieutenant Governor rejecting the recommendations of the Lokayukta are unreasonable, vitiated by arbitrariness, bear no rational nexus with the gravity and seriousness of the criminal offences which the Lieutenant Governor found each of the Municipal Councillors to have *prima facie* committed;

(vi) the Lokayukta, on receipt of the orders of the Lieutenant Governor, took recourse to the procedure stipulated in Section 12(3) of the Act and made Special Reports to the Lieutenant Governor seeking reconsideration of his decision and pointing out the legal position;

(vii) however the Lieutenant Governor has not taken any action on the said Special Reports; though the Special Reports were laid on the table of the State Assembly, neither the Executive nor the Legislature has deemed it necessary to take any action on the same; and,

(viii) that thereby the statutory provisions of establishing Lokayukta have been rendered otiose.

5. The Lieutenant Governor of Delhi and the Government of National Capital Territory of Delhi (GNCTD) in their counter affidavit have pleaded:-

(a) that the Supreme Court in ***Justice Chandrashekaraiah (Retd.) Vs. Janekere C. Krishna*** (2013) 3 SCC 117 (relied upon in ***Sunita Bhardwaj*** supra) has held that the functions discharged by Lokayukta are investigative in nature and the Special Report of the Lokayukta is only recommendatory and no civil consequences follow therefrom and that the Lokayukta has no jurisdiction or power to direct the Competent Authority to implement the report;

(b) that the Lieutenant Governor has done whatever was required to be done by him with respect to the report of the Lokayukta;

(c) that the Lieutenant Governor as Competent Authority gave an opportunity of hearing to the Municipal Councillors, in compliance with the principles of natural justice;

(d) that upon receipt of the Special Reports the Lieutenant Governor, Delhi had given his assent for laying the same along with respective Explanatory Memorandums before the Delhi Legislative Assembly; reports with respect to some of the Councillors had

already been so laid and the reports with respect to remaining shall be laid in the ensuing session; and,

(e) it thus cannot be said that the institution of Lokayukta had been undermined.

6. The respondents no.9 & 10 in the additional affidavit have further contended, (i) that the word "examine" in Section 12(2) of the Act has a very wide connotation and empowers the Competent Authority to give an opportunity of personal hearing to the indicted person, if required, so as to arrive at the decision whether to accept the recommendation in the report as it is or not; and, (ii) that no extraneous material was collected or considered by the Competent Authority.

7. Need is not felt to refer to the contents of the counter affidavits of the others or to the rejoinders filed.

8. We heard the counsel for the petitioner at length on 26th September, 2014. The arguments revolved around Section 12 of the Act which is as under:-

"***12. Report of Lokayukta and Upalokayukta -***

1. If, after inquiry into the allegations, the Lokayukta or an Upalokayukta is satisfied that such allegation is established, he shall, by report in writing, communicate his findings and

recommendations along with the relevant documents, material and other evidence to the competent authority.

2. *The competent authority shall examine the report forwarded to it under sub-section (1) and intimate, within three months of the date of receipt of the report, the Lokayukta or, as the case may be, the Upalokayukta, the action taken or proposed to be taken on the basis of the report.*

3. *If the Lokayukta or the Upalokayukta 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 functionary 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 Lieutenant Governor and also inform the complainant concerned.*

4. *The Lokayukta and the Upalokayukta shall present annually a consolidated report on the performance of their functions under this Act, to the Lieutenant Governor.*

5. *If in any special report under sub-section (3) or the annual report under sub-section (4) any adverse comment is made against any public functionary, such report shall also contain the substance of the defence adduced by such public functionary and the comments made thereon by or on behalf of the Government or the public authority concerned, as the case may be.*

6. *On receipt of a special report under sub-section (3), or the annual report under sub-section (4), the Lieutenant Governor shall cause a copy thereof together with an explanatory memorandum to be laid before Legislative Assembly*

7. *Subject to the provisions of Section 10, the Lokayukta may at his discretion make available from time to time, the substance of cases closed or otherwise disposed of by him, or by an Upalokayukta, which may appear to him to be of general public, academic or professional interest, in such manner and to such persons as he may deem appropriate."*

9. The Division Bench of this Court in ***Sunita Bhardwaj*** supra was concerned with the challenge to the order of the Competent Authority rejecting the report of the Lokayukta recommending administering of caution to the respondent no.1 in that case. The Lokayukta in that case also had prepared a Special Report and forwarded the same to the Competent Authority and which was laid before the Legislative Assembly. It was the contention of the petitioner in that case that the decision of the Competent Authority rejecting the recommendation of the Lokayukta was open to judicial review and was liable to be quashed since the Competent Authority though had called for the views of the public functionary against whom recommendation was made by the Lokayukta but had not called for the response thereto of the complainant or the views of the Lokayukta. Alternatively it was contended that the Competent Authority was not required to hold a hearing. The Division Bench, after concluding that the Lokayukta can at best be described as a sui generis quasi-judicial authority and that, although the Lokayukta is more than an investigator or an inquiry officer, at the same time, he is not placed on the pedestal of a judicial authority rendering a binding decision, framed the question whether the Competent Authority acts quasi judicially in exercising the power under Section 12(2) of the Act, and found / observed / held:-

I. that as per the scheme of the said Act while the inquiry is to be conducted by the Lokayukta, the decision is to be taken by the Competent Authority;

II. there is no doubt that the entire process of inquiry and decision making is quasi judicial in nature;

III. while the Lokayukta has to act quasi judicially and has to observe the principles of natural justice, the principles of natural justice would also become applicable to the decision making process of the Competent Authority;

IV. however while before the Lokayukta the complainant and the public functionary are pitted against each other because of rival stands that they take, before the Competent Authority, it is only the report of the Lokayukta along with ancillary documents and the public functionary against whom action is to be taken by the Competent Authority;

V. that the role of the Competent Authority is akin to that of a Disciplinary Authority before whom the delinquent employee has a right to represent against the report of the Inquiry Officer;

VI. the report of the Lokayukta does not merely contain the relevant documents, materials and evidence collected by the Lokayukta during the course of inquiry but also the findings of the Lokayukta; the said findings and recommendations of the Lokayukta constitute additional material before the Competent Authority of which the concerned public functionary has no knowledge; if such additional material unknown to the public functionary is to be taken into consideration by the Competent Authority while taking action or proposing to take action, it is imperative under the principles of natural justice that before the Lokayukta takes such a decision, the public functionary is given an opportunity to respond and comment upon the Lokayukta's findings and recommendations;

VII. that thus the course adopted in that case by the Competent Authority was not faulty and it was well within the powers of the Competent Authority to call for the views of the respondent no.1 on the report of the Lokayukta, before the Competent Authority took any action in the matter;

VIII. it was not necessary to obtain or call for the response of the complainant or the views of the Lokayukta; the complainant's

stand had been examined by the Lokayukta and had culminated in the report of the Lokayukta which contained the findings and recommendations – therefore nothing further was required from the complainant or the Lokayukta and only the public functionary against whom recommendations had been made was required to be given an opportunity of hearing by the Competent Authority;

IX. that the Lokayukta cannot request the Competent Authority to re-examine or re-consider the case;

X. the Lokayukta could not also have asked the Lieutenant Governor as the Competent Authority to send the case to the President for re-consideration – there is no provision in the Act for such a course of action; the Lokayukta, if not satisfied with the decision of the Competent Authority, can make a Special Report and upon the said Special Report being laid before the Legislative Assembly, no further action is contemplated under the Act by the Lokayukta or the Competent Authority;

XI. once the matter is placed before the Legislative Assembly it falls within the arena of the Legislators who eventually are representatives of the people;

XII. that the High Court in exercise of powers under Article 226 does not sit in appeal over the decision of the Competent Authority;

XIII. that before a writ of certiorari quashing the decision of the Competent Authority can be issued, the Court has to be satisfied that the Competent Authority acted without jurisdiction or in excess of it or in violation of the principles of natural justice; and,

XIV. the argument that the office of the Lokayukta has been reduced to a paper tiger is for the Legislature and not the Courts to address.

10. We had during the hearing on 26th September, 2014 enquired from the counsels whether the Lieutenant Governor acting as the Competent Authority, in exercise of powers under Section 12(2) of the Act, is required to act on the aid and advice of the Council of Ministers and further observed that the said aspect did not appear to have been addressed in ***Sunita Bhardwaj*** and that if the Competent Authority were to act on the aid and advice of the Council of Ministers, would not the argument of the exercise of function under Section 12

by the Competent Authority being quasi judicial or not become otiose. We had in this context also invited the attention of the counsels to ***Madhya Pradesh Special Police Establishment Vs. State of Madhya Pradesh*** (2004) 8 SCC 788.

11. The counsel for the respondent no.1 during the hearing on 22nd January, 2015 referred us to the special status of the Union Territory of Delhi under Article 239AA of the Constitution of India and under the Government of National Capital Territory of Delhi Act, 1991, as referred to in ***Delhi Bar Association Registered Vs. Union of India*** (2008) 13 SCC 628 but we fail to see as to how that is of any relevance. The position of the Lieutenant Governor of the NCT of Delhi as the Competent Authority vis-à-vis performance of functions under Section 12 of the Act does not appear to be any different from the position of Governor of any other State as Competent Authority under the corresponding statute of that State.

12. Though we had in our order dated 26th September, 2014 observed that the question whether the Competent Authority in exercise of powers under Section 12(2) of the Act is to act on the aid and advice of the Council of Ministers appeared to have not been addressed in ***Sunita Bhardwaj*** but find that the occasion therefor did not arise because the Competent Authority in that case, on receipt of the report with recommendations of the Lokayukta, had called for the

comments, besides of the public functionary against whom recommendations were made, also of the GNCTD and taken a decision thereafter. It thus appears that the Competent Authority in that case acted on the aid and advice of the Council of Ministers. It was however not the contention of any party before the Division Bench in ***Sunita Bhardwaj*** that Competent Authority erred in calling for the comments of the GNCTD. ***Sunita Bhardwaj*** thus cannot be said to have decided whether the Competent Authority, in exercise of powers under Section 12 (2), is to act in his own discretion i.e. *eo nomine* or on the aid and advice of the Council of Ministers. Though we had at one stage contemplated referring this matter to the Full Bench on this aspect but do not feel the need therefor as the said question is not necessary for adjudication of the present *lis*. We also refrain from returning our own findings on the said aspect as neither counsel, inspite of our asking, addressed us in *extenso* on the said aspect. We may however add that there is nothing to show whether the Competent Authority in the present case acted on the aid and advice of the Council of Ministers or in his own discretion.

13. Though the counsel for the petitioner contended that the present case is distinguishable from ***Sunita Bhardwaj*** but was unable to substantiate. He could not also dent the view taken in ***Sunita Bhardwaj***. Else, the present controversy

is squarely covered by the judgment in ***Sunita Bhardwaj*** and with which we see no reason to differ.

14. The Division Bench in ***Sunita Bhardwaj*** has held:-

(i) that there is no error in the Competent Authority, before taking a decision on the report of the Lokayukta, giving an opportunity of hearing to the public functionary against whom recommendation has been made by the Lokayukta; no corresponding opportunity is however to be given to the complainant or the Lokayukta.

The said finding negates the challenge by the petitioner to the procedure followed by the Lieutenant Governor in the present case.

(ii) that though the decision making by the Competent Authority is a quasi judicial function and is open to judicial review but only on the ground of the Competent Authority having acted without jurisdiction or in excess of it or in violation of principles of natural justice.

The said finding negates the challenge by the petitioner to the decision of the Lieutenant Governor, of rejecting the recommendation of the

Lokayukta, on the ground of same being unreasonable, arbitrary and bearing no nexus to the gravity of the finding of the Lokayukta and all of which are grounds on merits of the decision;

(iii) that under the Act no further action is contemplated once the Special Report of the Lokayukta is placed before the Legislative Assembly.

The said finding negates the contention of the petitioner, of the statutory provisions of establishing Lokayukta having been rendered otiose.

15. We may notice that the Division Bench of the High Court of Karnataka, in ***Natesh Vs. The State of Karnatka*** AIR 2012 Karnataka 149, has also held that the decision of the Governor, acting as the Competent Authority under the Lokayukta Act, is justiciable.

16. In the present case, though the Special Report prepared by the Competent Authority qua some of the respondents has been laid before the Legislative Assembly, qua others it has not been. Thus the only relief which can be given to the petitioner is, a direction for the Special Reports till now not laid before the Legislative Assembly of Delhi to be laid before the said Legislative Assembly. Accordingly, it is directed that the said Special Reports may be laid before the

Legislative Assembly within six weeks hereof. We may in this regard notice that it was the contention of the counsel for the respondents no. 9 & 10 before us that the present petition is in any case premature since the entire process provided for under the Act had not been undergone.

17. Before parting with the judgment, we would also like to, in view of the argument urged, of the Office of the Lokayukta becoming redundant if further action on the findings and recommendations of the Lokayukta were to be left ultimately to the Legislative Assembly, in addition to what has already been held in ***Sunita Bhardwaj***, record our views thereon.

18. The Delhi Lokayukta and Upa-Lokayukta Act, 1995 was enacted undoubtedly to constitute a mechanism for dealing with complaints of corruption against public functionaries including those in high places viz. Ministers, Members of Legislative Assembly, Chief Minister and public servants and in fulfillment of the commitment of the country of zero tolerance against corruption upon ratification of the United Nations Convention against Corruption. The Office of the Lokayukta and Upa-Lokayukta were set up to further strengthen the existing legal and institutional mechanism thereby facilitating a more effective implementation, however, the Act after providing *inter alia* for the appointment of the Lokayukta and the Upa-Lokayukta for the

purpose of conducting investigations and inquiries and the matters which may be inquired and the procedure therefor, has vide Section 12 aforesaid provided for the report and the recommendations of the Lokayukta to be lodged / communicated to the Competent Authority which in the present facts is the Lieutenant Governor of Delhi and has left the decision as to what action is to be taken thereon to the Competent Authority i.e. the Lieutenant Governor. Though the Lokayukta / Upa-Lokayukta if not satisfied with the said decision of the Competent Authority has been empowered to make a Special Report on the said decision of the Competent Authority but the said Special Report also is made actionable by the Legislative Assembly. The Act does not provide for any punishment to follow the findings of the Lokayukta or the Upa-Lokayukta and also does not provide for initiation of any prosecution on the basis of the findings in the report of the Lokayukta.

19. In this context, we find the status of the report of the Lokayukta to be akin to the reports of the Comptroller and Auditor General (CAG) of India which under Section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 are also required to be submitted to the Government concerned and to be laid before the Parliament / State Legislature of the State concerned.

20. We recently in ***Sarvesh Bisaria Vs. Union of India*** MANU/DE/3368/2014 and ***Raj Kachroo Vs. EdCIL (India) Ltd.*** MANU/DE/0240/2015 had occasion to consider the status of the report of the CAG and have found that no direction can be given by the Court to the Central Vigilance Commission (CVC) or the Government to take any action on the basis of the report of the CAG. Reference was made to ***Arun Kumar Agrawal Vs. Union of India*** (2013) 7 SCC 1 laying down that the CAG report is subject to scrutiny by Parliament and to the Parliamentary Debates and it is up to the Parliament / Legislative Assembly to accept or reject the report. It was further held that though CAG is a constitutional functionary but it is for the Parliament to decide the action to be taken on the report thereof. We thus concluded that the role of the CAG is to enable the Legislature to oversee the functioning of the Government and it for the Legislature to take action on the basis of CAG reports or direct the Government to take action and till the Legislature has not so directed, the Court cannot direct any action to be taken on the basis of the CAG reports.

21. Similarly, the Act with which we are concerned also leaves the decision of the action to be taken on the basis of the report of the Lokayukta to the

Competent Authority or to the Legislative Assembly and no direction, on the basis of the report of the Lokayukta can be given by the Court.

22. Parallel in this regard may also be drawn from the provisions of the Commissions of Inquiry Act, 1952 though a Commission of Inquiry, under Section 3 thereof is to be appointed by a Resolution of the Parliament or the Legislature of the State and for the purpose of making an inquiry into a matter of public importance, but the report of the Commission of Inquiry is again to be laid before the Parliament or the Legislature of the State and it has been held in ***Manohar Lal Vs. Union of India*** AIR 1970 Delhi 178 DB that such a report has no force *proprio vigore*. Though in ***Fazalur Rehman Vs. State of U.P.*** AIR 1999 SC 3460 the delay or inaction on the part of the State Government in considering such a report was deprecated and as a matter of good governance, it was held that the report should be acted upon by the Government expeditiously but the fact remains that without the Parliament / Legislature / Government taking any decision on the report, the same is of no avail. It has been held in ***Karam Singh Vs. Hardayal Singh*** (1980) ILR 1 P&H 388 that the report of such a Commission of Inquiry is only for the purpose of Government and cannot be used as evidence in judicial proceedings. Similarly, it has been held in ***T.T. Antony Vs. State of Kerala*** AIR 2001 SC 2637 that the Courts are not

bound by the report or findings of the Commission of Inquiry as they have to arrive at their own decision on the evidence placed before them, in accordance with law. It was held that the Commission was a fact finding body meant only to instruct the mind of the Government without producing any document of a judicial nature. It was held that the said reports did not even preclude the investigating agency from forming a different opinion.

23. Thus, howsoever high may the findings against a public functionary in the reports of the Lokayukta or the CAG or the Commission of Inquiry set the hopes and expectations of the people / citizens of the country that the erring public functionary will now be brought to book, the legal position is that the said findings are literally for the eyes and ears of the Parliament / Legislature / Government only and do not enable or empower a citizen to demand action against the erring public functionary and do not permit the Court to on the basis thereof, direct any action.

24. We are conscious that the same may belie the aspirations of the citizenry to transparency in administration and probity in public life but in the face of the clear statutory provisions and the interpretation by the Supreme Court of similar provisions of other statutes aforesaid, we have no option. Even otherwise the settled legal principle is (see ***Union of India Vs. Namit Sharma*** (2013) 10 SCC

359) that the Court cannot rewrite or recast or reframe the legislation in the garb of interpretation. The Court cannot thus on the pretext of giving meaning to a statute in fulfillment of the expectations of the citizenry, read into a statute what the Legislature in its wisdom has thought not to or has avoided to prescribe / provide. The Court cannot be swayed by what is understood to be the law by the people. Our personal views as Judges presiding the Court cannot be stretched to authorize us to interpret law in such a manner which would amount to legislation intentionally left over by the Legislature (see ***Ajaib Singh Vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd.*** (1999) 6 SCC 82). In fact, we have drawn parallel to the provisions of the Lokayukta Act with the provisions of the CAG Act and the Commissions of Inquiry Act only to demonstrate that there are other Constitutional offices / powerful bodies whose reports also are only for the consumption of the Legislature.

25. We may however notice 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. Section 63 of the said Act requires every State to establish a body to be known as the Lokayukta of 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 Delhi had prior thereto, vide the Act aforesaid established Lokayukta but the said Lokayukta as noticed above does not have the same powers as the Lokpal under the 2013 Act. Yet further, though Section 63 required the State Legislature to make such an enactment within one year from the date of commencement of the 2013 Act on 16th January, 2014 but such law has not been enacted as yet.

26. The petition is disposed of.

No order as to costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

FEBRUARY 19, 2015
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