IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: October 20, 2010
Decision on: November 22, 2010

W.P.(C) No. 1136 of 2010

R.K. SAXENA ..... Petitioner
Through: Mr. S.K. Dubey with
Mr. D. Abhinav Rao and
Mr. Jamal Akhtar, Advocates.

versus

RAVINDER BALWANI ..... Respondent
Through: Mr. Maninder Singh, Senior Advocate with Ms. Priya Kumar, Advocate for Applicant in CM No. 4290 of 2010.
Mr. K.B. Upadhyay with Mr. D.P. Singh, Advocates for Respondent.

WITH

W.P.(C) No. 3342 of 2010

CHETAN B. SANGHI ..... Petitioner
Through: Mr. N. Waziri with
Mr. Shoaib Haider, Advocate.

versus

R.N. BARARIA ..... Respondent
Through: Mr. Maninder Singh, Senior Advocate with Ms. Priya Kumar, Advocate for Applicant in CM No. 13761 of 2010.
Mr. K.B. Upadhyay with Mr. D.P. Singh, Advocates for Respondent.

AND

W.P.(C) No. 3345 of 2010

R.K. SAXENA ..... Petitioner
Through: Mr. S.K. Dubey with Mr. D. Abhinav Rao and Mr. Jamal Akhtar, Advocates.

versus

B.K. SHARMA ..... Respondent
Through: Mr. Maninder Singh, Senior Advocate with Ms. Priya Kumar, Advocate for Applicant in

CM No. 13760 of 2010.
Mr. K.B. Upadhyay with Mr. D.P. Singh,
Advocates for Respondent.

CORAM: JUSTICE S. MURALIDHAR

1. Whether reporters of the local news papers be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT
22.11.2010

W.P.(C) Nos. 1136, 3342 and 3345 of 2010 & CM Nos. 4290, 6722, 6725, 13760 & 13761 of 2010.

1. These three petitions involve the interpretation of Sections 2(m) (iv) and 17 of the Delhi Lokayukta and Upalokayukta Act, 1995 ('DLAU Act').

Background

2. The background to these petitions is that Shri Ravinder Balwani (the Respondent in W.P.(C) No. 1136 of 2010) filed a complaint before the Lokayukta complaining of Shri R.K. Saxena (the Petitioner in W.P.(C) No. 1136 of 2010) of misusing his official position as Director (Administrative) as well as Director (HR) of Delhi Transco Ltd. ('DTL') for personal benefit. Balwani's specific case was that Saxena being the Director of DTL, a company owned by the Government of National Capital Territory of Delhi ('GNCTD') was a 'public functionary' within the meaning of Section 2(m) (iv) of the DLAU Act.

3. In response to the above complaint Saxena took the plea that the Lokayukta had no jurisdiction over Saxena under Section 17 of the DLAU

Act since Saxena was a member of the Indian Administrative Services ('IAS') and that it was in that capacity he was sent on deputation to the DTL as Director (Administrative) & Director (HR). Saxena's case was that he did not lack immunity from jurisdiction of the Lokayukta under Section 17 only because he was a Director of a company owned by the GNCTD.

4. By an order dated 5th February 2010, the Lokayukta came to the conclusion that the preliminary objection raised by Saxena was without merit. It was held that the provision of Section 17 could not be used to defeat the provision of Section 2(m)(iv) of the DLAU Act unless it was impossible to effect reconciliation between the two provisions. The Lokayukta found that it was possible to reconcile the two provisions as a result of which "only those Members of the Civil Services of the Union, who are appointed as Chairman, Vice-Chairman or Managing Director or a Member of the Board of Directors in respect of Apex Cooperative Society or any Cooperative Society or Government Company, Local Authority, Corporation or Commission or Body set up by the Government would be covered within the definition of 'public functionary' but the other/remaining Members of Civil Service would be excluded from the said definition." In other words, the Lokayukta held that once an IAS officer is appointed as Director of a company such IAS officer would lose immunity under Section 17 of the DLAU Act and would be amenable to the jurisdiction of the Lokayukta for the acts done by him in his capacity as Director of such government owned company.

5. Aggrieved by the above decision, Saxena filed Writ Petition (C) No. 1136

of 2010 in this Court in which while directing notice to issue on 24th February 2010, this Court stayed the order dated 5th February 2010 of the Lokayukta.

6. The background to the filing of Writ Petition (C) No. 3345 of 2010 is that B.K.Sharma filed a complaint against Saxena before the Lokayukta on similar lines as Balwani. The Lokayukta proceeded to entertain the complaint, notwithstanding that Saxena produced before the Lokayukta the order dated 24th February 2010 passed by this Court in Writ Petition (C) No. 1136 of 2010. The present writ petition was filed seeking stay of further proceedings. While directing notice to issue on 17th May 2010, this Court stayed further proceedings in the complaint titled "***Shri B.K. Sharma v. Shri R.K. Saxena***" pending before the Lokayukta.

7. In Writ Petition (C) No. 3342 of 2010, the Respondent R.N. Bararia filed a complaint against the Petitioner Chetan B. Sanghi, a member of the IAS, who was serving on deputation as Chairman-cum-Managing Director, Delhi State Industrial and Infrastructure Development Corporation ('DSIIDC') before the Lokayukta complaining of abusing his position for improper and corrupt motives within the meaning of Section 2(b)(ii) of the DLAU ACT. The Lokayukta proceeded to entertain the complaint and summoned the records and fixed a date for further hearing. Aggrieved by the notice dated 13th April 2010 and a subsequent order dated 5th May 2010, passed by the Lokayukta by way of entertaining the complaint, Writ Petition (C) No. 3342 of 2010 was filed in this Court by Chetan B. Sanghi in which notice was issued by this Court on 14th May 2010 and further proceedings before the

Lokayukta in the complaint filed against the Petitioner by R.N. Bararia were stayed.

The common question

8. In all the three petitions, therefore, the common question that arises concerns the jurisdiction of the Lokayukta to entertain the complaint of these Petitioners. In other words, the question is whether on a collective reading of Sections 2 (m) (iv) and 17 of the DLAU Act, the complaints against the three writ petitioners were maintainable?

Decision of this Court

9. The long title to the DLAU Act states that it is an Act "to make provision for the establishment and functioning of the Institution of Lokayukta to inquire into the allegations against public functionaries in the National Capital Territory of Delhi and for matters connected therewith." The background to the enactment of the DLAU Act was an Interim Report of the Administrative Reforms Commission ('ARC') on "Problems of Redress of Citizens' Grievances". The ARC recommended that the person authorised to discharge the functions of the Ombudsman at the Centre should be called as 'Lokpal' and his counterpart in the States be called as 'Lokayukta'. In ***Office of Lokayukta v. Govt. of NCT of Delhi 160 (2009) DLT 1,*** a Division Bench of this Court explained as under (DLT at p.6):

> "the object of the Act is to ensure an independent investigation of administrative action. If after inquiry into the allegations, Lokayukta is satisfied that such allegation is established, he makes a report under Section 12(1) of the Act. After the report is submitted, the competent authority has to examine the report and intimate the action taken or proposed to be taken on the

basis of the report within the time prescribed. If the Lokayukta or the Upa-Lokayukta is satisfied with the action taken or proposed to be taken on the recommendations or findings contained in the report, he shall close the case under information to the complainant, the public servant and the competent authority concerned. But when he is not so satisfied and if he considers that the case so deserves, he may make a special report to the Lieutenant Governor and also inform the complainant. The Lokayukta and the Upalokayukta under Sub-section (4) have to present annually a consolidated report on the performance of their functions under the Act to the Lieutenant Governor. 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 the Legislative Assembly."

10. Keeping the above background in view, the provisions of the DLAU Act may be examined in some detail. The definition of 'public functionary' under Section 2(m) reads as under:

"**2. Definitions: -** In this Act, unless the context otherwise requires –

(m) "Public functionary" means a person who is or has been at any time-

(i) the Chief Minister or a Minister;

(ii) a Member of Legislative Assembly;

(iii) a person having the rank of a Minister but shall not include Speaker and Deputy Speaker of the Legislative Assembly;

(iv) a Chairman, Vice-Chairman or Managing Director or a Member of a Board of Directors (by Whatever name they be called) in respect of –

(1) an Apex Co-operative Society or any Co-

operative Society constituted or registered under the Delhi Co-operative Societies Act, 1972, which is subject to the control of the Government;

(2) a Government Company within the meaning of Section 617 of the Companies Act, 1956, engaged in connection with the affairs, and is under the control of the Government;

(3) a Local Authority established under any law in relation to Delhi;

provided that the provisions of this Act shall not be applicable to any authority of a Local Authority constituted under an enactment relatable to Entry No.18 of the State List of the Seventh Schedule of the Constitution;

(4) a Corporation engaged in connection with the affairs, and under the control, of the Government;

(5) any Commission or body set up by the Government which is owned and controlled by it;

(v) a Member of the Municipal Corporation of Delhi as defined in clause 2(27) of the Municipal Corporation Act, 1957 (as amended in 1993)"

11. There can be no doubt that the range of offices covered by the definition of 'public functionary' under Section 2(m) is indeed wide. As far as the companies are concerned, the Chairman, Vice-Chairman and Managing Director or a Member of the Board of Directors are the persons falling within the ambit of 'public functionary'. If one were to go only by Section

2(m) DLAU Act, there would be no doubt whatsoever that the three writ Petitioners, in their capacity as Chairman and Managing Director of companies owned by the GNCTD would be covered within the definition of 'public functionary'. However, this is not the only provision that is relevant. Section 17 of the DLAU Act reads as under:

> "17. For the removal of doubts it is hereby declared that nothing in this Act shall be construed to authorize the Lokayukta or an Upalokayukta to inquire into an allegation against -
>
> (a) any member of the Judicial Services who is under the administrative control of the High Court under Article 235 of the Constitution;
>
> (b) any person who is a member of a Civil Service of the Union or an All India Service or Civil Service of a State or holds a Civil post under the Union or a State in connection with the affairs of Delhi."

12. In the order dated 5th February 2010, while negativing the preliminary objection raised by R.K. Saxena, the Lokayukta interpreted Section 17 DALAU Act as being a 'non-obstante clause.' The usual words associated with a non-obstante clause are "notwithstanding anything contained in this Act or any other Act for the time in force." However, Section 17 DLAU Act is of a declaratory nature. It unambiguously declares that "noting in this Act shall be construed to authorise the Lokayukta or the Upalokayukta" to enquire into the allegation against an IAS officer or a member of the judicial services under the administrative control of the High Court. In effect, Section 17 is a total prohibition against the Lokayukta entertaining any

complaint against an IAS officer or a member of the judicial services. This Court is, therefore, not able to concur with the Lokayukta in interpreting Section 17 DLAU Act as a non-obstante clause. The words "for the removal of doubts" preceding Section 17, underscores that it overrides anything to the contrary that might be indicated anywhere else in the DLAU Act and this includes Section 2 (m) (iv). There is no ambiguity whatsoever about Section 17 DLAU Act. It is of a declaratory nature which absolutely prohibits the Lokayukta from enquiring into an allegation against an IAS officer. Section 17 DLAU Act admits of no ambiguity and is plainly a complete exception to Section 2 (m) (iv). Consequently there is no occasion, as part of an interpretative exercise, to adopt a 'purposive' construction (See for instance ***Grid Corporation of Orissa Ltd. v. Eastern Metals and Ferro Alloys 2010 (2) SCALE 687***). For the same reason there is also no warrant for examining if Section 17 should be read subject to Section 2 (m) (iv) or read 'harmoniously' with it to preserve both provisions. It is possible that such questions might arise if this Court were required to examine the constitutional validity of Section 17. However, that is not within the scope of the present proceedings or for that matter the proceedings before the Lokayukta.

13. It is trite that the powers and functions of the office of the Lokayukta are to be found within the DLAU Act. The Lokayukta has to interpret the provisions of the DLAU Act as they occur. It is not within the scope of the powers of the Lokayukta to add to the provisions of the DLAU Act clauses or phrases that do not exist as has been done by the Lokayukta in the impugned order dated 5th February 2010. The Lokayukta has by an

interpretative exercise carved out a further exception to Section 17 DLAU Act by holding that "a Chairman, Vice Chairman, Managing Director, etc." of a government owned company, who continues as a member of the IAS, would continue to be a 'public functionary' within the meaning of Section 2 (m) (iv) DLAU Act to whom the immunity under Section 17 DLAU Act will not apply. In effect the Lokayukta has added a further proviso to Section 17 when none exists.

14. An IAS officer if appointed as a Director of a government company on deputation by no means, ceases to be an IAS officer. It would be stretching the language of Section 2(m) to state that despite the total prohibition under Section 17 DLAU Act on the Lokayukta enquiring into an allegation against an IAS officer, if such IAS officer is a Director of a government owned company, he will become amenable to the jurisdiction of the Lokayukta by virtue of Section 2(m) DLAU Act. Section 2(m) is only a definition clause and has necessarily to be read along with Section 17 to understand the extent of exercise of the jurisdiction of the Lokayukta over an IAS officer. If the legislative intent was that the IAS officer would lose immunity under Section 17 by virtue of becoming a Director of a government owned company, then there should have been a proviso to Section 17 to that effect. All the provisions of an enactment have to be given their full meaning. It is not possible to read into certain provisions certain exceptions which do not exist.

15. It is not as if either Mr. Bararia or Mr. Sharma or Mr. Balwani would have no remedy whatsoever for redressal of their complaints. They can still

pursue the other remedies available to them in accordance with law. It is not as if the only remedy available to them is under the DLAU Act.

16. This Court is unable to concur with the view expressed by the Lokayukta on the interpretation of Section 17 and Section 2 (m) (iv) of the DLAU Act. In the considered view of this Court, in view of the total prohibition under Section 17 of the DLAU Act, the Lokayukta had no jurisdiction to enquire into any allegation against the Petitioners who happened to be at the relevant point of time members of the IAS and were on deputation to the government owned companies as Director or Chairman and Managing Director.

17. Consequently, the impugned order dated 5th February 2010 passed by the Lokayukta in the complaint titled "***Ravinder Balwani v. R.K. Saxena***" is hereby set aside. The complaint is dismissed as being not maintainable. For the same reasons, the complaints titled "***B.K. Sharma v. R.K.Saxena***" and "***R.N.Bararia v. Chetan B. Sanghi***" pending before the Lokayukta are also dismissed as being outside the scope of the jurisdiction of the Lokayukta.

18. The writ petitions are allowed but in the circumstances with no order as to costs. The applications are disposed of.

The Lokayukta's three applications (CM Nos. 4290, 13761 and 13760 of 2010)

19. These three applications are by the Lokayukta, one in each writ petition, seeking the permission of this Court to address arguments on the issue of jurisdiction of the Lokayukta. In para 5 of the application in the first writ

petition by R.K.Saxena, the Lokayukta expresses a "concern" that "in the present writ petition the endeavour of the petitioner appears to be to curtail and restrict the functioning and jurisdiction of the Lokayukta in the areas in which it is entitled to operate by purporting to keep off a large segment of 'Public Functionaries' who are otherwise subject to the jurisdiction of the Lokayukta." A similar concern is expressed in the other two applications in which the Lokayukta has prayed for permission for "being impleaded as a party" or to address the Court on the issue of jurisdiction.

20. Mr. Maninder Singh, learned Senior counsel appearing for the Lokayukta submitted that under the provisions of the DLAU Act, the Lokayukta is performing an investigative function and not an 'adjudicatory' function. The impugned order dated 5th February 2010 passed by the Lokayukta ruling on his own jurisdiction was not to be construed as an exercise by the Lokayukta of an 'adjudicatory' function; only where an authority discharged 'adjudicatory' functions would the rule of impartiality get attracted. In other words, as long as the Lokayukta was only performing an investigative function under the DLAU Act the Lokayukta could not be said to have ceased to be impartial only because the Lokayukta sought to be impleaded and heard in a pending dispute between two parties arising out of an order passed by the Lokayukta. Mr. Singh submitted that in seeking to be heard in these writ petitions in support of his own order, the Lokayukta was performing a 'duty' entrusted to him by the DLAU Act and was carrying forth the mandate of the DLAU Act. The Lokayukta was only seeking to assist the Court in interpreting the provisions of the DLAU Act on an important question of jurisdiction of the Lokayukta which would have a

bearing on complaints of a similar nature in future. Mr. Singh submitted that in doing so the Lokayukta could not be seen as aligning himself with one side against another even if before the Lokayukta they were parties opposed to each other, and continue to be in the writ petitions. Mr. Singh submitted that the office of the Lokayukta was occupied by a person of considerable judicial experience who was expected to act impartially and that this impartiality would in no way be affected by the filing of these applications seeking that the Lokayukta be heard before this Court in support of his own order.

21. Mr. Singh relied upon the decision of the Division Bench of this Court in ***Lokayukta v. Govt. of NCT of Delhi*** (*supra*). The said decision does not decide the issue of the locus of the Lokayukta to participate in proceedings in which the order of the Lokayukta is under challenge. However, according to Mr. Singh, the fact that this Court entertained a writ petition filed by the Lokayukta to challenge the order of a learned Single Judge of this Court implied that this Court recognised the locus of the Lokayukta to petition this Court to be heard in a matter which was being inquired by him. Reference was made by Mr. Singh to the decision of the Supreme Court in ***Institution of A.P. Lokayukta v. T. Rama Subba Reddy (1997) 9 SCC 42***. One of the first appeals in the batch in which the said decision was rendered was by the Lokayukta of Andhra Pradesh challenging an order of the High Court of Andhra Pradesh. The said decision did not decide the question whether the Lokayukta had the locus standi to petition the High Court or Supreme Court in the same matter in which the Lokayukta had taken a view. Still, according

to Mr. Singh, the locus standi was impliedly recognised by the Supreme Court.

22. Learned counsel for the writ petitioners expressed reservations on the filing of these applications by the Lokayukta. They submitted that these had to be viewed as abandonment by the Lokayukta of objectivity and impartiality. They displayed "affection" of the Lokayukta to his point of view which he wanted to support before this Court. They submitted that having passed the order dated 5th February 2010 taking a view on the question of jurisdiction, the Lokayukta should not be concerned with what happens to that order when challenged at the next level. Counsel for the complainants submitted that the complainants neither supported nor opposed the applications of the Lokayukta.

23. This Court begins the discussion of the question raised with certain preliminary observations. Usually when the decision of an authority is challenged in a writ petition by the person aggrieved, the authority ought not to be made a party to such proceedings. This was explained by the Supreme Court in ***Savitri Devi v. District Judge, Gorakhpur (1999) 2 SCC 577*** where it observed: (SCC, pp 582-583)

> "14. Before parting with this case it is necessary for us to point out one aspect of the matter which is rather disturbing. In the writ petition filed in the High Court as well as the Special Leave Petition filed in this Court, the District Judge, Gorakhpur and the 4th Additional Civil Judge (Junior Division) Gorakhpur are shown as respondents and in the Special Leave Petition they are shown as contesting respondents. There was no necessity for impleading the judicial officers who disposed of the matter in a civil proceeding when the writ petition was

> filed in the High Court; nor is there any justification for impleading them as parties in the Special Leave Petition and describing them as contesting respondents. We do not approve of the course adopted by the petitioner which would cause unnecessary disturbance to the functions of the concerned judicial officers. They cannot be in any way equated to the officials of the Government. It is high time that the practice of impleading judicial officers disposing of civil proceedings as parties to writ petitions under Article 226 of the Constitution of India or Special Leave Petitions under Article 136 of the Constitution of India was stopped. We are strongly deprecating such a practice."

The above decision was followed by this Court in ***UPSC v. Shiv Shambhu 2008 IX AD (Del) 289*** and ***Sat Prakash Rana v.The Lieutenant Governor AIR 2010 Del 100***.

24. To return to the present cases, the Lokayukta whose order is under challenge by way of these applications is seeking to intervene or be impleaded to be heard to support his order on the question of jurisdiction. And while the prayer is opposed by one of the parties to the dispute before the Lokayukta, the other neither supports nor opposes the prayer of the Lokayukta. No precedent has been cited where a similar request was entertained by a Court. The submission is that since the decision of the Lokayukta under challenge is not an instance of 'adjudication', the Lokayukta is, by asking to be impleaded and heard, not abandoning impartiality and neutrality.

25. Given the above submission, this Court is first required to examine the nature of the function discharged by the Lokayukta in deciding upon his jurisdiction. The Lokayukta performs myriad functions, not all of which

partake the character of an 'adjudication' of a dispute (*lis*). A decision of the Lokayukta, say, to terminate the services of an employee can be challenged before a court and the Lokayukta would have to defend such decision. The Lokayukta would in that instance be both a necessary and proper party to the dispute. In another role, the Lokayukta could frame its own rules of procedure. These could be challenged on the ground that they are ultra vires the powers of the Lokayukta under the DLAU Act. In such dispute again the Lokayukta will be both a necessary and proper party. There may be yet another instance where at the next level in the judicial hierarchy where a dispute concerning the powers and functions of the Lokayukta is involved, the court in question may on its own require the Lokayukta to appear before the court and assist it in the interpretative exercise. However, the context in these cases is different. In none of these cases has the Lokayukta taken *suo motu* notice of any acts of corruption against any of the petitioners. Therefore, that context need not be examined by this Court. Also, this Court has not required the Lokayukta to assist it.

26. When, as in each of the present three cases, a complaint is filed before the Lokayukta alleging that a person is guilty of corruption, there are two parties: the complainant and the person complained against, they are necessarily placed in an adversarial position before the Lokayukta. In the course of the pendency of such complaint, the Lokayukta might be called upon to take a decision on several issues at the interlocutory stages. For instance on the preliminary question of jurisdiction, limitation and so on. The decision that the Lokayukta takes on these issues cannot be termed as a discharge of a purely 'investigative' function of the Lokayukta under the

DLAU Act. Such a decision is an instance of exercise of an 'adjudicatory' function.

27. The test is fairly straightforward in the context where the person complained against objects to the jurisdiction of the Lokayukta to entertain the complaint and the complainant naturally contends to the contrary. By accepting the contention of one side and negativing that of the other the Lokayukta 'decides' the issue of jurisdiction in favour of one party and against another. It is a decision therefore in a *lis* that is by its very nature adversarial. It cannot but be termed as an adjudication of that issue, although at a preliminary stage. It is a decision amenable to judicial review.

28. Even assuming, as urged by learned Senior counsel for the Lokayukta, that the order dated 5th February 2010 passed by the Lokayukta is not an 'adjudication', it still does not relieve the Lokayukta from the duty to be seen to be impartial even in the discharge of such function. The background to the enactment of the DLAU Act was the Report of the Administrative Reforms Commission on "Problems of Redress of Citizens' Grievances". In para 25 of the said Report the essential qualities of the office of a Lok Pal or Lokayukta were identified thus:

"(a) They should be demonstrably independent and impartial.

(b) …

(c) …

(d) Their status should compare with the highest judicial functionaries in the country.

(e) …"

That ‘impartiality’ figures high in the list of desired qualities of a Lokayukta is an indication of the value attached to this feature which perhaps is essential of any fair and independent decision-making body.

29. The Preamble and other provisions of the DLAU Act reflect the legislative intent that the office of Lokayukta should be occupied by a person whose weight of judicial experience would by itself lend credibility to the office and there could be no doubt about the impartiality of the person occupying that office. Since this office was being entrusted with powers to inquire into complaints of corruption against high ‘public functionaries’ including the Chief Minister, the Ministers and the MLAs, apart for the Chairman, Vice-Chairman and Managing Director of state owned corporations, it was to be handled with independence, sensitivity, competence and impartiality. This was expected to pervade all the functions discharged by the Lokayukta not restricted to the actual decision-making in a *lis*.

30. The position is explained in some detail in ‘Administrative Law’ by PP Craig (Fifth Edition, Sweet & Maxwell, 2003, pp 452-453):

> “...The vital point, brought out forcefully by Fuller, is that just as adjudication is distinguished by the form of participation that it confers, so are other types of decision making, and just as the nature of adjudication shapes the procedures relevant to its decisional form, so do other species of decision making. Nine modes of decision making are listed by Fuller: mediation; property; voting; custom; law officially declared; adjudication; contract; managerial direction; and resort to chance.

In each of these instances the relationship between the type of decision making, and the procedural rules, attendant thereon, can be presented in the following manner. The procedural rules will be *generated* by, and will protect the integrity of, the type of decision making in issue. For example, adjudication is one species of decision making. The rule against bias is generated by this type of decision making. It would be inconsistent with our idea of what judging means to allow the decision to be made by one who was biased. In this sense, the procedural rule is there to protect the integrity of what we mean by adjudication. It is equally the case that if we demand that an agency uses adjudicatory process rights then we are indirectly forcing it to make its decision by adjudication rather than by some other means.

The relevance of this can be simply stated. There may well be situations when the procedures modelled on adjudication are not the most effective or appropriate, and where safeguards developed against the backdrop of a different type of decision making may be more efficacious and apposite. The emergence of fairness may help us towards a realisation of this. The point is well put by Macdonald:

> 'Rather than ask what aspects of adjudicative procedures can be grafted onto this decisional process reviewing tribunals must ask: what is the nature of the process here undertaken, what mode of participation by affected parties is envisioned by such a decisional process, and what specific procedural guidelines are necessary to ensure the efficacy of that participation and the integrity of the process under review?' "

31. The expectation, writ large in the DLAU Act, is that the Lokayukta will at all times be seen to be impartial, in the discharge of the myriad functions of that office. Normally, once the Lokayukta has taken a decision in a pending dispute, whether on the question of jurisdiction or otherwise, the

Lokayukta should not seek to 'defend' such decision when it is challenged before a Court. It is possible in a given case where the Lokayukta has not taken a view one way or the other, and the question say on the jurisdiction and powers of the Lokayukta arises before the Court in proceedings where the Lokayukta's decision is challenged, the Court can invite the Lokayukta to address the Court on such question. But that is not the situation here. The Lokayukta is seeking permission to be impleaded in order to be heard in support of the decision that has been challenged. The writ petitioner who is aggrieved by the Lokayukta's decision and has therefore challenged it, opposes such request by the Lokayukta for impleadment.

32. No authority can expect that its decisions would not be vulnerable to challenge. Fallibility is inherent to decision-making at any level. And ultimately, in the appellate ladder, the challenge to correctness of decisions has to stop somewhere. Just as the task of challenging a decision, rendered in a *lis* at the interlocutory or final stage, in the higher forum is left to the person affected by such decision, the task of defending such decision should be left to the party in whose favour such decision has been rendered. The Lokayukta, or for that matter any decision-maker, should not take that burden on itself. The Lokayukta, as much as the parties to the *lis* before the Lokayukta, has to accept the final verdict of the higher forum on the correctness of his decision. That is the unwritten premise on which the entire hierarchical legal system functions. In the considered view of this Court, the Lokayukta cannot, in the facts and circumstances, be 'impleaded' or be permitted to be heard in the writ petitions in support of its orders under challenge.

33. The applications are dismissed.

S. MURALIDHAR, J

NOVEMBER 22, 2010
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