

ITEM NO.23

COURT NO.2

SECTION PIL-W/XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO(S). 684/2016

ASHWINI KUMAR UPADHYAY

PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

[WITH I.A. NO.89106/2018 (APPLN. FOR MODIFICATION OF ORDER DT. 19.04.2018)]

WITH

SLP(C) NO. 22841/2016 (XII)

[AND I.A. NO.2/2016 - EXEMPTION FROM FILING O.T.]

Date : 10-07-2018 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
 HON'BLE MRS. JUSTICE R. BANUMATHI
 HON'BLE MR. JUSTICE NAVIN SINHA

For Parties :

petitioner-in-person

State of W.B.

Ms. Indira Jaising, Sr. Adv.
 Mr. Suhaan Mukerji, Adv.
 Ms. Astha Sharma, Adv.
 Mr. Amit Verma, Adv.
 For M/s PLR Chambers & Co., AOR

Mr. G. Ananda Selvam, Adv.
 Mr. K. Mayil Samy, Adv.
 Mr. Gopal Balwant Sathe, AOR

Mr. A.K. Upadhyay, Adv.
 Mr. R. D. Upadhyay, AOR

Mr. Maninder Singh, ASG
 Ms. V. Mohana, Sr. Adv.
 Mr. R. Balasubramanian, Adv.
 Mr. Rohit Bhatt, Adv.
 Mr. Prabhas Bajaj, Adv.
 Ms. Aarti Sharma, Adv.
 Mr. A.K. Sharma, Adv.
 Mr. Mukesh Kumar Maroria, AOR

State of A.P. Mr. Guntur Prabhakar, AOR
 Ms. Prerna Singh, Adv.

State of Arun. Pra. Mr. Rituraj Biswas, Adv.
 Mr. Anil Shrivastav, AOR

State of Assam Mr. Shuvodeep Roy, AOR
 Mr. Sayooj Mohandas M., Adv.

State of Tripura Mr. Shuvodeep Roy, AOR
 Mr. Ritu Raj Biswas, Adv.

State of Bihar Ms. Purnima Krishna, Adv.
 Mr. Abhinav Mukerji, AOR.

State of H.P. Mr. Abhinav Mukerji, AAG
 Mrs. Bihu Sharma, Adv.
 Mr. Siddharth Garg, Adv.

State of Chhattisgarh Mr. Aniruddha P. Mayee, AOR
 Mr. A. Selvin Raja, Adv.
 Mr. Chirag Jain, Adv.

State of Goa Mr. A.N.S Nadkarni, ASG
 Ms. Ruchira Gupta, Adv.
 Mr. Bhaskar Chhakara, Adv.
 Mr. Salvador Rebellow, Adv.
 Mr. Shishir Deshpande, AOR

State of Gujarat Ms. Hemantika Wahi, AOR
 Ms. Puja Singh, Adv.
 Ms. Mamta Singh, Adv.
 Ms. Vishakha, Adv.

	Ms. Pragati Neekhara, AOR
State of J & K	Mr. M. Shoeb Alam, AOR Ms. Fauzia Shakil, Adv. Mr. Ujjwal Singh, Adv. Mr. Mojahid Karim Khan, Adv.
	Ms. Kiran Bala Sahay, AAG Ms. Priyanka, Adv. Ms. Priyadarshni Priya, Adv. Mr. Sarad Kumar Singhanian, AOR.
State of Karnataka	Mr. V. N. Raghupathy, AOR Mr. Prakshit P. Angadi, Adv.
	Mr. Mishra Saurabh, AOR
State of Meghalaya	Mr. Ranjan Mukherjee, AOR Mr. S.C. Ghosh, Adv. Mr. Daniel Stone Lyngdoh, Adv. Mr. K.V. Kharlyngdoh, Adv.
State of Nagaland	Mr. K.N. Balgopal, Adv. Gen., Nagaland (Sr.) Mrs. K. Enatoli Sema, AOR Mr. Amit Kumar Singh, Adv.
	Mr. Shibashish Misra, AOR
State of Punjab	Ms. Uttara Babbar, AOR Ms. Akanksha Choudhary, Adv.
	Mr. Devendra Singh, AOR
	Mr. Nalin Kohli, Adv. Ms. Vishakha Ahuja, Adv. Mr. Indrajeet Singh, Adv. Mr. Milind Kumar, AOR
State of Sikkim	Ms. Aruna Mathur, Adv. Mr. Avneesh Arputham, Adv. Ms. Anuradha Arputham, Adv. For M/S. Arputham Aruna And Co, AOR

State of Miroram	Mr. Shikhar Garg, Adv. Mr. Ganesh Bapu, Adv. Mr. Mudit Makhija, Adv. Mr. P.V. Yogeswaran, AOR Mr. M. Yogesh Kanna, AOR
State of Uttara-khand	Ms. Rachana Srivastava, AOR Ms. Monika, Adv.
UT of Puducherry	Mr. R. Venkataramani, Sr. Adv. Mr. V. G. Pragasaam, AOR Mr. Prabu Ramasubramanian, Adv. Mr. S. Manuraj, Adv. Mr. Yashraj Singh Bundela, Adv. Mr. Praveen Vignesh, Adv.
State of Manipur	Mr. Leishangthem Roshmani Kh., AOR Ms. Maibam Babina, Adv.
State of Haryana	Mr. Anil Grover, AAG Ms. Noopur Singhal, Adv. Mr. Sanjay Kr. Visen, AOR Mr. Shivam Kumar, Adv.
State of M.P.	Mr. Rajesh Srivastava, Adv.
State of Telangana	Mr. S. Udaya Kumar Sagar, Adv. Mr. Mrityunjai Singh, Adv.
State of Tamil Nadu	Ms. Narmada Sampath, AAG, TN Mr. K.V. Vijaya Kumar, AOR Ms. Maitreyee Mishra, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Re: State of Meghalaya

We have perused the affidavit dated 21st June, 2018 filed on behalf of the State of Meghalaya.

Shri Ranjan Mukherjee, learned counsel appearing for the State of Meghalaya, on instructions received,

has up-dated the information laid before the Court by means of the aforesaid affidavit dated 21st June, 2018. Shri Mukherjee has submitted that a meeting of the Search Committee has been held last week and the Search Committee has recommended the names for appointment as Chairperson and Members (Judicial and Non-Judicial) whose names are required to be considered and finalized by the Selection Committee. Shri Mukherjee has further submitted that the Selection Committee has decided to hold its meeting on 24th July, 2018.

While taking the aforesaid statement on record we direct the Chief Secretary of the State of Meghalaya to lay before the Court within seven days from the date of 24th July, 2018 the result of the meeting of the Selection Committee and if the Selection Committee has approved the name(s), the concerned Authority shall issue necessary appointment orders so as to ensure that the institution of the Lokayukta starts functioning in the State forthwith.

2. Re: State of Mizoram

No affidavit/report/status report has been filed on behalf of the State of Mizoram. The State is also not represented.

In these circumstances, we direct the Chief Secretary of the State of Mizoram to be personally present in Court on 17th July, 2018.

List accordingly.

3. Re: State of Nagaland

Report of the Action taken by the State of Nagaland in the matter of appointment of Lokayukta under the Nagaland Lokayukta Act, 2017 be submitted within seven days from today.

List the matter again on 17th July, 2018.

4. Re: State of Jammu & Kashmir

It is stated by the learned counsel appearing for the State of Jammu & Kashmir that Jammu and Kashmir Accountability Commission Act, 2002 and Jammu and Kashmir State Vigilance Commission Act, 2011 which provide for the Accountability Commission and the State Vigilance Commission adequately takes care of the requirements spelt out by the Lokpal and Lokayukta Act, 2013 and, therefore, the existing machinery in the State effectively answers the issue(s) raised.

Shri Ashwani Upadhyay, petitioner appearing in-person contested the aforesaid position. The matter will be heard on 17th July, 2018.

5. Re: UT of Puducherry

In the additional counter affidavit filed on behalf of the Union Territory of Puducherry on 11th April, 2018 it had been stated as follows:

"6. I respectfully submit that in light of advice of Ministry of Personnel, Public Grievances & Pensions, Dept. of Personnel & Training, New Delhi, the Government of Puducherry is considering the matter of enactment of separate law providing for Lokayukta in the Union Territory of Puducherry.

7. I respectfully submit that as this process requires time including for consultation/approval with Ministry of Home Affairs, Government of India, I pray for extension of time of six months in the matter."

Yesterday i.e. on 9th July, 2018, an affidavit has been filed by the Chief Secretary, Government of Union Territory of Puducherry wherein in paragraph 3 it has been stated as follows:

"3. I respectfully, submit that Puducherry being a Union Territory, administered by the President through Lieutenant Governor, will come under jurisdiction of Lokpal. However, in furtherance of submission before the Hon'ble Court and in compliance of Hon'ble Court order dated 19.4.2018, the Draft Bill for establishment of Lokayukta in the Union Territory of Puducherry has been prepared. After consultation with relevant departments, the draft bill will be placed before the cabinet of Government of

Puducherry. After Cabinet and Lieutenant Governor's approval, the bill will be sent to Ministry of Home Affairs, New Delhi for its approval. Thereafter, it will be placed before the Legislative Assembly and after passing the same, the bill will be sent to the Ministry of Home Affairs for obtaining the President's assent. The process will take some time and the Government of Puducherry may be granted sufficient time to complete the process in the matter."

At the hearing, Shri R. Venkatramani, learned Senior Counsel appearing for the Union Territory of Puducherry has submitted that the Draft Bill has been prepared and will be placed before the Assembly which is currently in session. Thereafter, if approved by the Assembly, it will be sent to the Lieutenant Governor who after concurring with the same will be sent to Ministry of Home Affairs, New Delhi for its approval. Thereafter, on being approved, it will be sent to the Assembly and after the same is passed it goes to the President for his assent.

For the present, we direct the Chief Secretary to place the Bill before the Assembly in the current session and we adjourn the matter by expecting that each of the Authorities at each stage, as stated above, will act in the matter with the greatest of promptitude.

List the matter after three months.

6. Re: State of Tamil Nadu

It is stated by the learned counsel appearing for the State of Tamil Nadu that the Tamil Nadu Lokayukta Bill, 2018 has been passed by the State Assembly yesterday i.e. 9th July, 2018.

The necessary follow-up action to enable the institution of Lokayukta to come into effect as per the provisions of the Tamil Nadu Lokayukta Act, 2018 be expedited. We expect and hope that the said process be completed within a period of three months from today.

7. Re: State of Telangana

No reply/status report has been filed in terms of the previous order of this Court dated 19th April, 2018.

The learned counsel appearing for the State has submitted that such a reply has come to her last evening. Reading the contents of the said reply, learned counsel has submitted that additional time of six to eight months has been sought. However, there is no mention in the said reply as to what progress has been made in the matter of appointment of Lokayukta since the last date when the matter was heard.

In these circumstances, we fix the matter on 17th

July, 2018 to enable the learned counsel to lay before the Court necessary information.

8. Re : State of Tripura

By our previous order dated 19th April, 2018 we had already observed that no orders would be required in the case as the Lokayukta in the State has been appointed and is functioning.

9. Re: State of West Bengal

We have perused the affidavit dated 9th July, 2018 filed on behalf of the State of West Bengal.

Learned Senior Counsel appearing for the State of West Bengal has submitted that the West Bengal (Amendment) Bill, 2018 will be placed before the State Legislative Assembly in the ensuing Assembly session which is likely to begin on 20th July, 2018. It has been further stated that the said Bill after it is duly passed by the Legislative Assembly will be referred to the Hon'ble Governor for his assent and thereafter steps will be taken for appointment of Lokayukta.

List the matter after three months by which time the Court hopes and expects that the appointment of Lokayukta will be made by the State Government.

10. Re: State of Odisha

In the previous order of this Court dated 19th April, 2018 it has been recorded that the Odisha Lokayukta Act, 2014 had come into force with effect from 16th January, 2015 after the Presidential assent was received. The said fact, stated on affidavit, has now been stated to be incorrect inasmuch as the Supplementary affidavit filed by the Chief Secretary of the State of Odisha dated 9th July, 2018 mentions that the Odisha Lokayukta Act, 2014 has been gazetted on 23rd July, 2018 and has been given effect to with effect from 7th July, 2018. Order dated 19th April, 2018 stands corrected, as prayed for.

In the aforesaid affidavit dated 9th July, 2018 filed by the Chief Secretary in paragraph 5 it has been stated that the Odisha Lokayukta (terms of the Search Committee and Conditions of Appointment of Members and Fees and Allowances Payable to its Members) Rules, 2018 has been duly framed and that steps have been taken for constitution of the Selection Committee and the Search Committee for selection of Lokayukta and on receipt of recommendations appointments will be made. As the Odisha Lokayukta Act has been brought into effect on 7th July, 2018 and the relevant Rules have also been framed

in the light of what has been stated in the affidavit of the Chief Secretary of the State of Odisha we direct that the follow-up measures leading to appointment of Lokayukta be completed within three months from today.

List the matters after three months.

Affidavit of the Chief Secretary of the State of Odisha dated 9th July, 2018 shall be kept on record.

11. Re: State of Manipur

Learned counsel for the State of Manipur has placed before the Court an affidavit dated 9th July, 2018 sworn by the Chief Secretary. In paragraph 2 of the said affidavit it has been stated as follows:

"2. That, as directed by the Hon'ble Supreme Court of India to the Ld. Standing Counsel appearing for the State of Manipur on 19th April, 2018 and the subsequent telephonic conversation had with the Ld. Standing Counsel, I beg to submit that necessary actions have already taken up by the Department of Personnel and Administrative Reforms, Government of Manipur and the Department has completed drafting the Manipur Lokayukta Rules, 2018. The draft Rules have also been vetted by Law Department, Government of Manipur. The same will be placed before the State Cabinet in its next sitting for final approval. Once the Rules have been duly notified, appointment of Chairperson and Members of Manipur Lokayukta shall be done forthwith and the same shall be reported to the Hon'ble Supreme Court of India."

Having taken note of the contents of the aforesaid paragraph 2 of the affidavit dated 9th July, 2018 filed by the Chief Secretary, Government of Manipur we grant three months' time to the State of Manipur to complete the process leading to the appointment of Lokayukta.

Affidavit dated 9th July, 2018 filed by the Chief Secretary, Government of Manipur shall be kept on record.

12. Re: State of Arunachal Pradesh

We have heard the learned counsel for the State of Arunachal Pradesh who has placed before the Court certain papers received by him from the concerned Authority which would go to show that Search Committee has been constituted on 5th July, 2018 for the purposes of recommending suitable names for appointment of Chairperson and Members of the proposed Lokayukta. The said names as and when recommended are required to be considered by the Selection Committee.

Learned counsel submits that Rules contemplate a maximum period of three months for the Search Committee to complete its deliberations and make recommendations and thereafter two months for the Selection Committee

to consider the same and make its recommendations for appointment of Lokayukta.

As the Lokayukta Rules have been notified and Search Committee has been constituted and the Selection Committee is statutorily prescribed (if not already constituted) we are of the view that the appropriate order to be passed would be to express the hope and expectation of this Court that notwithstanding the time schedule that is mentioned in the Rules, as indicated by the learned counsel and recorded above, the process of appointment of Lokayukta after due selection etc. be completed within a period of three months from today.

List the matter thereafter.

All the cases except the cases of States of Mizoram, Nagaland, Jammu & Kashmir and Telangana which will be considered on next Tuesday i.e. 17th July, 2018 will be listed on the expiry of three months from today.

[VINOD LAKHINA]

AR-cum-PS

[ASHA SONI]

BRANCH OFFICER

NB: Affidavit of the Chief Secretary of the State of Odisha dated 9th July, 2018; Affidavit dated 9th July, 2018 filed by the Chief Secretary, Government of Manipur and the paper submitted in the Court by the learned counsel for the State of Arunachal Pradesh, attached with the Record of Proceeding, shall be kept on record.