

ITEM NO.4

COURT NO.1

SECTION PIL-W

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

Date : 24-10-2018 These petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE K.M. JOSEPH

For Parties :

Mr. Gopal Sankaranarayana, Adv.
Ms. Aishwarya K., Adv.
Ms. Gayatri Verma, Adv.
Mr. R.D. Upadhyay, AOR
Petitioner-in-person

UOI

Mrs. V. Mohana, Sr. Adv.
Mr. R. Balasubramanian, Adv.
Ms. Shraddha Deshmukh, Adv.
Mr. A.K. Sharma, AOR

State of W.B.

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

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

Mr. Mukesh Kumar Maroria, AOR

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

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

State of Assam Mr. Shuvodeep Roy, AOR
Mr. Somnath Banerjee, Adv.

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

State of Bihar Mr. Abhinav Mukerji, AOR.
Mr. Bihu Sharma, Adv.
Ms. Pratishtha Vij, Adv.

State of H.P. Mr. Abhinav Mukerji, AAG, HP
Mr. Siddharth Garg, Adv.

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

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

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

Ms. Pragati Neekhara, AOR

State of J & K Mr. Shekhar Naphade, Sr. Adv.
Mr. M. Shoeb Alam, AOR
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.
 Md. Apzal Ansari, Adv.

Mr. Mishra Saurabh, AOR

State of Meghalaya Mr. Ranjan Mukherjee, AOR
 Ms. Aprajita Mukherjee, Adv.

State of Nagaland Mr. K.N. Balgopal, Sr. Adv. Gen., Nagaland
 Mrs. K. Enatoli Sema, AOR
 Mr. Amit Kumar Singh, Adv.
 Mr. A.P. Mukundan, Adv.
 Mr. Nitya Nambiar, Adv.
 Mr. Vitso Rio, Adv.

Mr. Shibashish Misra, AOR
 Mr. Chandan Kumar Mandal, Adv.
 Mr. Ompal Singh, Adv.
 Mr. R.K. Yadav, Adv.

State of Punjab Ms. Uttara Babbar, AOR
 Ms. Bhavana Duhoon, Adv.

Mr. Devendra Singh, AOR

Mr. Milind Kumar, AOR

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 Ms. Aruna Mathur, Adv.
 Mr. Avneesh Arputham, Adv.
 Ms. Anuradha Arputham, Adv.
 Ms. Geetanjali, Adv.
 For M/S. Arputham Aruna And Co, AOR

State of Mizoram Mr. Shikhar Garg, Adv.
 Mr. Mudit Makhijani, 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. Ms. Anupama Ngangom, Adv.
State of Haryana	Mr. Anil Grover, AAG Mr. Shivam Kumar, Adv. Mr. Satish Kumar, Adv. Mr. Sanjay Kr. Visen, AOR
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	Mr. Shekhar Naphade, Sr. Adv. Mr. K.V. Vijaya Kumar, AOR Ms. Purbitaa Mitra, Adv.
State of Kerala	Mr. C.K. Sasi, AOR. Ms. Nayantara Roy, Adv.
State of Mah.	Ms. Suvarna Ganu, Adv. Mr. Nishant Katneshwarkar, AOR

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

1. Re: State of Manipur

Mr. Leishangthem Roshmani Kh., learned Standing Counsel appearing for the State of Manipur, on instructions from the Chief Secretary of the State of

Manipur, has submitted that within a week from today the Manipur Lokayukta Rules, 2018 will be notified and thereafter acting in accordance with the provisions of the Rules appointment of Chairperson and Members of the Manipur Lokayukta shall be made to ensure that the office of the Lokayukta becomes functional within a period of three months from today.

While taking the aforesaid undertaking made before the Court on behalf of the Chief Secretary on record we direct the State of Manipur to act accordingly and ensure that the office of the Lokayukta starts functioning within a period of three months commencing from today i.e. 24th October, 2018.

The case will be listed after three months.

2. Re: State of Odisha

The affidavit filed on behalf of the State of Odisha is wholly unsatisfactory.

The Chief Secretary of the State of Odisha will be personally present in Court on the next date fixed. We would expect the Chief Secretary of the State to come up with firm commitments as to the different dates on which the different stages of the process of

appointment of Lokayukta will be completed and the date on which the office of the Lokayukta would start functioning in the State of Odisha.

List after three months.

3. Re: State of Tamil Nadu

On behalf of the State of Tamil Nadu, Shri Shekhar Naphade, learned Senior Counsel submits, on the basis of interaction that the learned Standing Counsel has had with the Chief Secretary of the State, that the office of the Lokayukta in the State of Tamil Nadu would start functioning with effect from 1st February, 2019 and the process of appointment of Chairperson and Members of the Lokayukta will be completed on or before 31st January, 2019.

In view of the above statement made on behalf of the Chief Secretary of the State of Tamil Nadu we do not consider it necessary to pass any further orders in this regard for the present.

4. Re: State of West Bengal

On behalf of the State of West Bengal, Ms. Indira Jaising, learned Senior Counsel submits on the basis of interaction that the learned Standing Counsel has had with the Chief Secretary of the State that the

office of the Lokayukta in the State of West Bengal would start functioning with effect from 1st January, 2019 and the process of appointment of Chairperson and Members of the Lokayukta will be completed on or before 31st December, 2018. Learned Senior Counsel has further submitted that under the Act it is not necessary for the State to constitute a Search Committee and that the process of identification of persons to fill up the posts of Chairperson and Members of the Lokayukta can and will be performed by the Selection Committee itself.

In view of the above statement made on behalf of the Chief Secretary of the State of West Bengal we do not consider it necessary to pass any further orders in this regard for the present.

5. Re: State of Nagaland

We have heard Shri K.N. Balgopal, learned Senior Advocate General for the State of Nagaland who submits that an amendment to Section 3(2) of the Nagaland Lokayukta Act, 2017 making/bringing in the Hon'ble Chief Minister of the State as one of the persons who will have a role in the selection of the Lokayukta is required to be made.

While we cannot comment on the necessity of an amendment to a statute the same being the prerogative of the Legislature, the reason advanced does not commend to us for acceptance as the appointment of Lokayukta is to be made by the State Government itself.

We would like to interact with the Chief Secretary of the State of Nagaland on this aspect of the matter who will be personally present on 29th October, 2018.

The case so far as State of Nagaland will be listed on the said date i.e. 29th October, 2018.

6. Re: State of Meghalaya

Shri Ranjan Mukherjee, learned counsel appearing for the State of Meghalaya has stated that Justice Pranoy Kumar Musahary, a retired judge of the Gauhati High Court has been appointed as the Chairperson of the Lokayukta and he has assumed office. Such of the functions that can be carried out by the Chairperson under the Act may now be undertaken.

Shri Rajan Mukherjee has further submitted that though the names of Judicial and Non-Judicial Members have been recommended by the Search Committee, the term of the Search Committee has expired and the process of re-validating the term/reconstitution of the Search Committee is presently going on and no sooner the same is complete the exercise of appointment of Judicial and Non-Judicial Members of the Lokayukta will be completed.

We direct the State of Meghalaya to act promptly in the matter of reconstitution/extending the validity of the term of the Search Committee and thereafter to appoint Judicial and Non-Judicial Members without any delay.

The matter will be considered on the next date fixed.

List after three months.

7. Re: State of Mizoram

On behalf of the State of Mizoram, Mr. Shikhar Garg, learned Standing Counsel, has submitted on instructions received from the Law Secretary of the State that a meeting of the Selection Committee will be held tentatively on 16th November, 2018 and proceedings

will be finalized within a week thereafter. It is further submitted that the office of the Lokayukta is expected to commence functioning with effect from 1st December, 2018.

While taking the aforesaid statement on record we make it clear that the functioning of the office of the Lokayukta in the State of Mizoram will in no way be postponed beyond 15th December, 2018.

No further orders would be called for at this stage.

8. Re: U.T. Admn. of Puduchery

Shri R. Venkataramani, learned Senior Counsel appearing on behalf of the Union Territory Administration of Puduchery has submitted that within a week from today the Lokayukta Bill will be forwarded to the Ministry of Home Affairs for approval and once approved it will be placed before the U.T. Legislature for enactment. Thereafter the enactment will require the assent of the President of India whereafter the process of appointment of Lokayukta can be undertaken.

At this stage, we would request Ms. Shraddha Deshmukh, learned counsel, who takes notice on behalf of the Union of India to ensure that process of

approval to the Bill to be sent by the U.T. Admn. of Puduchery is expedited and other steps in the process be also expedited to ensure appointment of Chairperson and Members of the Lokayukta at an early date.

Ms. Shraddha Deshmukh, learned counsel is requested to interact with the learned Solicitor General to ensure that the directions of this Court are duly complied with.

List the matter after three months.

9. Re: State of Telangana

Upon hearing the learned counsel appearing for the State of Telangana we arrive at the conclusion that the State of Telangana has not done anything and has made no progress whatsoever in the matter of appointment of Lokayukta, save and except, to say that the State is scheduled to go to the polls next month and that the required exercise can be undertaken only thereafter. We are not being offered any other information which could be of relevance.

We direct the Chief Secretary of the State of Telangana to look into the matter; prepare the ground work so that immediately on assumption of office by the

new Government, the office of the Lokayukta can become functional within a particular time frame.

The case of State of Telangana will be considered after three months.

10. Re: State of Arunachal Pradesh

On instructions received from the Chief Secretary of the State of Arunachal Pradesh Shri Anil Srivastava, learned Standing Counsel, has stated that certain changes by way of Ordinance in the Arunachal Pradesh Lokayukta Act, 2014 has been approved by the cabinet and the Ordinance will be promulgated within a period of three weeks from today whereafter the process of appointment of Lokayukta and Members will be taken up and will be completed within an outer limit of three months.

Taking the aforesaid statement made on behalf of the Chief Secretary of the State of Arunachal Pradesh on record we grant time to the State of Arunachal Pradesh to complete the process of appointment of Lokayukta and Members to ensure that the said body starts functioning with effect from 1st February, 2019.

No further orders will be called for at this stage.

[VINOD LAKHINA]
AR-cum-PS

[ASHA SONI]
ASSISTANT REGISTRAR