IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. SOUMEN SEN

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

TUESDAY, THE 31ST DAY OF MARCH 2026 / 10TH CHAITHRA, 1948

WP(C) NO. 11107 OF 2024

PETITIONER/S:

N.PRAKASH
AGED 59 YEARS
PRAJITH VIHAR, AYINI ROAD, MARADU P.O. ERNAKULAM,
PIN - 682304

BY ADV N.PRAKASH(PARTY-IN-PERSON)

RESPONDENT/S:

STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001

BY ADVS.
GOVERNMENT PLEADER
SHRI.K.GOPALAKRISHNA KURUP, ADVOCATE GENERAL

OTHER PRESENT:

V. MANU-SPL.GP TO A.G.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31.03.2026, ALONG WITH WP(C).18749/2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. SOUMEN SEN

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

TUESDAY, THE 31ST DAY OF MARCH 2026 / 10TH CHAITHRA, 1948

WP(C) NO. 18749 OF 2024

PETITIONER/S:

RAMESH CHENNITHALA M.L.A.
AGED 66 YEARS
S/O LATE RAMAKRISHNA PILLA, MEMBER, KERALA LEGISLATIVE ASSEMBLY, HARIPAD ASSEMBLY CONSTITUENCY, ALAPPUZHA DISTRICT, KERALA, RESIDING AT 485, ANANDAMANDIRAM, NEAR SUBRAMANIA SWAMY TEMPLE, 28, HARIPPAD, ALAPPUZHA DISTRICT, PIN - 690514

BY ADVS.
SMT.NISHA GEORGE
SRI.GEORGE POONTHOTTAM (SR.)
SRI.A.L.NAVANEETH KRISHNAN
SMT.ANN MARIA FRANCIS
SHRI.REGINALD VALSALAN
SHRI.ANSHIN K.K
SMT.NAMITA PHILSON
SMT.KAVYA VARMA M. M.
SHRI.SIDHARTH.R.WARIYAR

RESPONDENT/S:

THE STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001

BY ADVS.
GOVERNMENT PLEADER
SHRI.V.MANU, SENIOR G.P.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31.03.2026, ALONG WITH WP(C).11107/2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

JUDGMENT

SOUMEN SEN, C.J.

These writ petitions filed as Public Interest Litigations involving the common questions of law and facts are taken up together and disposed of by this common judgment.

2. The writ petitioner in W.P.(C) No. 18749/2024 is an elected member of the Kerala Legislative Assembly, presently from Haripad assembly. The petitioner in W.P.(C) No. 11107/2024 is an Indian citizen and presently residing in the State of Kerala. The 1st petitioner is represented by Senior Counsel Mr. George Poonthottam, assisted by Ms. Kavya Verma. The 2nd petitioner is appearing in person.

3. The common thread of challenge in these writ petitions is the amendment to the definition of the “competent authority” and Section 14 of the Kerala Lok Ayukta Act, 1999 whereby the declaration of the Lok Ayukta or the Upa Lok Ayukta has been made as recommendation.

4. Mr. George Poonthottam, the learned Senior Counsel, has submitted that the object of the Kerala Lok Ayukta Act, 1999 (for short, the 'KLAA') stands defeated by replacing the "declaration" with a "recommendation", whereby the executive authority would now be required to review a decision rendered by a retired Judge of the Hon'ble Supreme Court or by a retired Chief Justice of the High Court, as the case may be.

5. It is submitted that the amendment, in effect, amounts to an administrative review of a decision taken by a judicial or quasi-judicial authority, as it cannot be disputed that the functions discharged by the Lok Ayukta or the Upa Lok Ayukta, as the case may be, are judicial or quasi-judicial in nature, as recognised in ***Chandrashekaraiah (Retd) v. Janekere C.Krishna and Others***[1]. In this regard, the learned Senior Counsel has referred to paragraphs 107 and 108 of the decision in ***Chandrashekaraiah*** (supra) to argue that, having regard to the broad spectrum of functions, powers, duties and responsibilities of the Lok Ayukta as prescribed under the KLAA

1 (2013) 3 SCC 117

it would be evident that he is not merely performing a quasi-judicial function, as contrasted with a purely administrative or executive function, but is more than an investigator or an enquiry officer.

6. The significance of the unamended provision was to give due importance and enforcement to the declaration made by the Lok Ayukta in respect of the Chief Minister, a Minister and a Member of the Legislative Assembly of the State of Kerala. However, the same has now been reduced and watered down to practically nothing, as the State Legislature is now required to consider and treat the report of Lok Ayukta as the recommendation of the Lok Ayukta. This was not what was intended when the KLAA was enacted. It is submitted that, though in ***Chandrashekaraiah*** (supra) it was stated that the position of the Lok Ayukta was s*ui generis,* meaning thereby that it is one of its own kind, the effectiveness of the declaration contemplated in the KLAA is nowhere diluted in the said

judgment, notwithstanding the fact that it may not be strictly considered to be a judicial order.

7. The very purpose of appointing a Judge to investigate in the manner prescribed under Sections 9 to 12 of the KLAA clearly demonstrates that the Legislature intended to obtain a neutral and impartial view from an authority who, over a period of time, has gained experience on the judicial side and is capable of adjudicating and deciding the complaint. It, therefore, follows that such an authority is not an ordinary authority or an executive body entrusted with the power of adjudication.

8. A Judge in charge under the unamended Act is required to hold a detailed investigation and thereafter, make a declaration, which the Legislature thought fit to accept without even batting an eyelid. The amendment is a clear act of interference with due discharge of the judicial functions of an authority vested with such power under law and it violates the rule of law which requires impartiality and neutrality in the process of adjudication.

9. The Lok Ayukta Act is enacted for the purpose of improving the standards of public administration, including cases of corruption, favoritism, official indiscipline in the administrative machinery. The Lok Ayukta and Upa-Lok Ayukta, appointed as per Section 3 of the KLAA aim at ensuring clean and transparent administration. The aforesaid amendments are totally against the aims and objectives of the KLAA. The arguments of the petitioners can be summarised as follows:

i) By amending Section 14 of the KLAA, the Lok Ayukta and Upa Lok Ayukta have been converted as a body, without any power, in the case of Chief Minister and Members of the Legislative Assembly, as the enforcement of the recommendation made by the Lok Ayukta and Upa-Lok Ayukta is at the mercy of the competent authority. Prior to the amendment, it was obligatory on the part of the competent authority in terms of Sections 14(1) and (2) of the KLAA to accept and act upon the said recommendation. Now, the Lok Ayukta or the Upa-Lok Ayukta is necessitated to make

recommendation to the competent authority and thereafter, it is for the competent authority to examine the recommendation and communicate to the Lok Ayukta or Upa-Lok Ayukta. As such, the Lok Ayukta or the Upa-Lok Ayukta has been converted to a powerless body, acting upon the recommendations of the competent authority.

ii) The amendments incorporated to Sections 2, 3 and 14 of the KLAA resulted in conferring power on the Legislature, Executive and Speaker to consider/revisit the merit of the order passed by the Lok Ayukta. The said conferment of power is delegation over the Legislature, Executive and Speaker to decide as to whether the order is to be accepted or not. This can only be termed as legislative interference with the functioning of the judicial body.

iii) By amending Section 14 of the KLAA, the finality of the orders passed by the Lok Ayukta or the Upa-Lok Ayukta is taken away, vesting power upon the State Legislative Assembly

and the Speaker of the Legislative Assembly to examine the recommendation of the Lok Ayukta or the Upa-Lok Ayukta.

iv) Prior to the amendment, if a finding is returned by the Lok Ayukta or Upa Lok Ayukta against a public servant, the said public servant is required to vacate his office as provided therein on finding by the Lok Ayukta or Upa Lok Ayukta that the public servant has abused his position. However, the power conferred on the Lok Ayukta or Upa-Lok Ayukta has now completely been taken away by the amendment to Section 14.

v) The doctrine of separation of power which form part of the basic structure of the Constitution of India is enumerated in various judgments of the Hon'ble Supreme Court. By upholding the separation of powers between the Legislature, Executive and the Judiciary, it has been time and again reiterated that these three organs have to function as separate organs of the republic and that they cannot take over the functions assigned to one other.

vi) The impugned amendments are an attempt to weaken the judicial system, by encroaching upon the independence of the judiciary.

vii) It is also relevant to note that there are no provisions in other States wherein, the competent authority in relation to the Chief Minister is the State Legislative Assembly and that of a member of the State Legislative Assembly is the Speaker of the State Legislative Assembly. A perusal of the Karnataka Lokayukta Act, 1984 and the Tamil Nadu Lok Ayukta Act, 2018, would show that the competent authority in relation to the Chief Minister is the Governor. Also, in Karnataka Lokayukta Act, 1984, the competent authority in relation to a member of the State Legislature is the Governor acting in his discretion. As such, the amendments are violative of the basic structure doctrine and hence, liable to be struck down.

10. The learned Senior Counsel is, in fact, trying to emphasise that the amendment is shocking and clearly subversive of all known canons of law and fairness, as it gives overriding power

to the State Legislature to treat the report of the Lok Ayukta, which was earlier considered as a declaration, now as a recommendation. If this amendment is allowed, it would make a mockery of the entire adjudicatory process and would amount to clear violation of the basic concept of justice, thereby defeating the very purpose and object of the KLAA. It would now mean that the Executive will decide the fate of an authority, even though the very object of the KLAA is to ensure impartial adjudication by a judicial authority – no less than a Judge of the Hon'ble Supreme Court or the Chief Justice of the High Court, who may now be substituted by a Judge of the High Court. It is articulated that overriding the decision of the Lok Ayukta was not contemplated under the original Act, and the amended Act, by diluting the said provisions, has rendered the object of the legislation redundant. It is submitted that the amendment is unconstitutional, as it strikes at judicial independence in reviewing the declaration which is now a recommendation of the Lok Ayukta.

11. In short, the argument is that the effect of the amendment is to be judged on the touchstone of the rule of law and whether it violates the rule of law would be the proper test to assess the quality of the amendment. The purpose and object of the KLAA would be defeated if the reports recommending actions are rendered ineffective and inoperative, as is intended by replacing "declaration" with "recommendation" in the amendment to Section 14 of the KLAA. The power of the Governor has also been diluted in the definition clause of "competent authority", as the Governor is no longer the competent authority *vis-à-vis* the Chief Minister; instead, the State Legislature has been made the competent authority for implementing the report of the Lok Ayukta. The said amendments, if allowed to be sustained, would weaken the faith of the people in the rule of law and it is necessary that the Constitutional Court safeguards the rule of law by setting aside the amendments.

12. The learned Senior Counsel has submitted that, upon analysing the provisions of both the amended and unamended

Act, there has been no fundamental change in the powers to be exercised by the Lok Ayukta and the Upa Lok Ayukta with regard to the manner of investigation and the proposed action, as elaborately set out in Sections 9 to 12 of the KLAA. However, the effectiveness of the report has now been rendered ineffective by replacing the word “declaration” in the unamended Section 14 with “recommendation,” resulting in a complete change with regard to the enforceability of the said report, which is now to be considered a recommendation instead of a declaration. While a declaration was enforceable without any further scrutiny and was not subject to review by any competent authority under the unamended Section 3 of the KLAA, by reason of the amendment to Section 14, the report, which is now in the nature of a recommendation, will be scrutinized by the State Legislative Assembly in relation to the Chief Minister, instead of the Governor immediately taking steps on the basis of the said report under the unamended provision, which did not permit any further review. The said amendments, according to the

learned Senior Counsel, in fact, amount to a review by the State Legislature of a report prepared and submitted by a Judge of the Hon'ble Supreme Court or by the Chief Justice of the High Court, which would, in effect, constitute an administrative review of a decision taken by a judicial or quasi-judicial authority having the trappings of a court.

13. The learned Senior Counsel, with reference to Sections 9 to 12 of the KLAA, has strenuously argued that these powers are essentially judicial or quasi-judicial in nature, having the trappings of a court, and hence, on the basis of the decision of the Hon'ble Supreme Court in ***Amrik Singh Lyallpuri v. Union of India***[2], the amendments are clearly unsustainable, since they, in effect, provide for an administrative review of a decision taken by a judicial or quasi-judicial body. In this regard, reference is made to paragraph 17 of the decision in ***Amrik Singh Lvallpuri*** (supra) which is reproduced as under:

> *"17. In a subsequent Constitution Bench decision of this Court in L. Chandra Kumar v. Union of*

2 (2011) 6 SCC 535

> *India [(1997) 3 SCC 261 : 1997 SCC (L&S) 577 : AIR 1997 SC 1125] Abmadi, C.J. after an analysis of different decisions of this Court, affirmatively held that judicial review is one of the basic features of our Constitution. Such a finding of this Court, obviously means that there cannot be administrative review of a decision taken by a judicial or a quasi-judicial authority which has the trappings of a court. Since judicial review has been considered an intrinsic part of constitutionalism, any statutory provision which provides for administrative review of a decision taken by a judicial or a quasi-judicial body is, therefore, inconsistent with the aforesaid postulate and is unconstitutional."*
>
> **** (emphasis supplied)*

14. The learned Senior Counsel has submitted that the said amendments are shocking and run counter to the basic concept of justice, and that, if given effect, they would make a mockery of the entire adjudicative process, whereby the Legislature can now completely annul the decision of the Lok Ayukta. It is not only detrimental to the well-established notions of justice but also confers a power that is liable to be abused or misused. In placing reliance upon the decision in ***M.P. High Court Bar***

Association v. Union of India & Others[3], it is submitted that vesting of the ultimate authority to uphold or reject the report of Lok Ayukta would make a mockery of the very purpose for which the KLAA was enacted. The said decision has also been relied upon to emphasise that the rule of law would cease to have any meaning, as it would be open to the State Government to defy the report of the Lok Ayukta and, in that sense, it would clearly violate the basic structure of the KLAA.

15. Lastly, reliance has been placed upon the decision in ***Madras Bar Association v. Union of India and Another***[4], to argue that the impugned amendments would amount to an impermissible exercise of legislative power, as they overrule the recommendations of the Lok Ayukta, which run completely counter to the object of the KLAA and keeping in mind the nature of the duties performed by the Lok Ayukta in processing the complaint in investigating the allegations that resulted in the filing of a declaration, which would otherwise have been

---

3 (2004) 11 SCC 766

4 (2026) 2 SCC 1

binding upon the Government. The said amendments, therefore, clearly interfere with the due discharge of the functions of a person not less than a Judge of the Hon'ble Supreme Court or High Court, and if such interference is allowed at this stage, it would violate the rule of law.

16. Mr. N. Prakash, appearing in person, has reiterated the submissions of the learned Senior Counsel. It has been emphasised that the essential feature of a judgment or quasi-judicial order is the independence of the authority and the finality attached thereto, in the absence of a judicial process, such as an appeal or judicial review. When an order is issued by a high-powered body like the Lok Ayukta, which comprises former Judges of the Hon'ble Supreme Court or former Chief Justices of a High Court, the character and quality of the orders passed are of the highest standard. The orders thus passed have all the trappings of a judicial order and cannot be equated with an administrative or statutory order, against which, an appeal to a higher authority in the Executive

Government can be contemplated.

17. The learned counsel has relied upon the decision of the Hon'ble Supreme Court in ***Indira Nehru Gandhi v. Raj Narain and Ors***[5] to argue that it has been clearly held in the said decision that none of the three organs of the Republic, namely, the Executive, the Legislature and the Judiciary, can take over the functions assigned to the others. It is the basic structure or scheme of the system of Government or the Republic laid down in this Constitution, whose identity cannot, according to the majority view in ***Kesavananda's***[6] case, be changed, even by resorting to Article 368.

18. *Per contra*, Mr. Gopalakrishna Kurup, the learned Advocate General, has submitted that in W.P.(C) No. 18749 of 2024, the contentions are to the effect that the impugned amendments have resulted in orders passed by the Lok Ayukta, a quasi-judicial forum, being subjected to revisit by an authority, other than a judicial forum; that the amendments are against basic

---

5 AIR 1975 SC 2299
6 AIR 1973 SC 1461

structure principle and concept of separation of powers; and that the impugned amendments take away the power of Lok Ayukta in regard to finality of its orders.

19. The learned Advocate General has referred to Sections 24, 32 and 48 of the Lokpal and Lokayuktas Act, 2013 ("2013 Act") and submits that Section 24, *inter alia*, requires Lokpal to send a copy of the report together with its finding to the competent authority. Section 32 of the 2013 Act enables the Lokpal only to recommend transfer or suspension of a public servant to the Central Government. Section 48 of the 2013 Act provides for the reports of Lokpal to be presented annually to the Hon'ble President. The Hon'ble President shall cause a copy of the report to be laid before each House of Parliament together with a memorandum explaining, in respect of the cases, if any, where the advice of the Lokpal was not accepted, the reason for such non-acceptance.

20. The learned Advocate General has further submitted that the grounds on which a *vires* of the legislation can be

challenged are now well settled. It is trite and settled law and no more *res integra* that the *vires* of a legislation can only be challenged on the grounds of lack of legislative competence, the same being violative of Part III of the Constitution, the same being violative of any other constitutional provision and the same being vitiated by manifest arbitrariness. The challenge to the impugned amendments are not mounted on any of these grounds, save bald pleadings.

21. That the State Legislature is having the legislative competence to enact the impugned amendments is not disputed. The provisions of the impugned amendments are not inconsistent with any provisions of an earlier law made by the Parliament or an existing law or any other matter enumerated in the concurrent list. Further, Section 63 of the Lokpal and Lok Ayukta Act, 2013 provides that every State shall establish a Lok Ayukta for the State, if not so established, constituted or appointed, *by a law made by the State Legislature.* Kerala Lok Ayukta Act, 1999, being a law made by the State Legislature,

the impugned amendments are also not in conflict with the Lokpal and Lok Ayukta Act, 2013 also.

22. The petitioner has not made out any case of the impugned amendment being violative of Part III of the Constitution or of any other constitutional provision. The petitioner has also not brought out any case of there being manifest arbitrariness in the impugned amendments.

23. Lok Ayukta is a creation of the Act. It is well within the legislative domain to alter, amend or vary its powers by way of the impugned amendments.

24. The impugned amendment cannot be, by any stretch of imagination, stated to be against basic structure principle. Even otherwise, it is trite and settled and no more *res integra* that the constitutional validity of a statute cannot be challenged for violation of the basic structure of the Constitution.

25. The learned Advocate General has submitted that the contention of the writ petitioners that the Lok Ayukta possesses

all the powers of a court and that the impugned amendments result in undue interference with the administration of justice and the same is against the concept of separation of powers, is unsustainable and reflects a clear misunderstanding and misconception regarding the functioning of the Lok Ayukta.

26. It is submitted that the Preamble of the KLAA declares that it is expedient to make provision for the appointment and functions of certain authorities for making enquiries into any action (including any omission and commission in connection with or arising out of such action) relatable to matters specified in List I or List III of the VII Schedule to the Constitution of India. A reading of the said Preamble together with Section 7 (Matters which may be investigated by the Lok Ayukta and Upa Lok Ayuktas), Section 8 (Matters not subject to investigation) and Section 9 (Provisions relating to complaints and investigations) of the KLAA make it abundantly clear that the functions of the Lok Ayukta are investigative in nature. Section 12(1) of the KLAA empowers Lok Ayukta to submit a report

after investigation on a complaint involving grievance. Section 14 of the KLAA enables the Lok Ayukta to submit a report after investigation into a complaint involving an allegation.

27. The above provisions reiterate that the functions of the Lok Ayukta are only investigative in nature. It is also trite and settled law that the nature and functions of Lok Ayukta and Upa-Lok Ayukta are investigative and that Lok Ayukta or Upa Lok Ayukta is neither a court nor a Tribunal. It is also settled that Lok Ayukta or Upa Lok Ayukta was not placed on the pedestal of a judicial authority rendering a binding decision and that Lok Ayukta did not function as a Court of law, but as an investigating functionary. A report or a declaration by the Lok Ayukta does not partake the character of a judicial order. In this regard, the learned Advocate General has relied upon the following decisions:

(i) ***State of Kerala v. Bernard***[7]***; and***

(ii) ***Justice Chandrashekaraiah v. Janekere C. Krishna and others***[8]***.***

---

[7] 2002 KHC 765

[8] (2013) 3 SCC 117

28. In so far as the function of the Lok Ayukta is essentially of investigative nature, it cannot be said that the amendment to Section 14, as per the impugned amendment, will result in executive encroachment into the domain of the judiciary or in Executive becoming the Appellate Authority against the declaration passed by the Lok Ayukta or will be violative of the doctrine of separation of powers.

29. The composition of Lok Ayukta provided for in Section 3 of the KLAA; the mandate of Section 4 of the KLAA; the manner for removal of Lok Ayukta, prescribed under Section 6 of the KLAA; the provisions of Section 11(3) of the KLAA; the power conferred on the Lok Ayukta and Upa Lok Ayukta, as per the KLAA, to issue warrant and enabling gathering of evidence; and the powers conferred or the Lok Ayukta and the Upa Lok Ayukta under Sections 18 and 19 of the KLAA will not make the Lok Ayukta a judicial body or a Court or a Tribunal or part of the judicial organ of the State.

30. It is submitted that the amendment to Section 14 of the KLAA by way of the Amendment Act, does not confer any appellate power on the Executive, as contended by the petitioners. It only enables the competent authority to take a call on the report of the Lok Ayukta, after affording the public servant an opportunity of being heard. The amendment only makes Section 14 of the KLAA compatible with constitutional provisions, as explained hereinafter.

31. The learned Advocate General in justification of the amendment to Section 14 has submitted that a public servant, as defined in the KLAA, takes in, *inter alia*, Chief Minister of the State, Ministers of the State, Members of the Legislature and Government servants. Article 163(1) of the Constitution of India provides that there shall be a Council of Ministers headed by the Chief Minister to aid and advice the Governor. Article 164(1) of the Constitution provides that a Chief Minister shall be appointed by the Governor and that the Ministers shall be appointed by the Governor on the basis of the advice of the

Chief Minister. It is also provided therein that Ministers shall hold office during the pleasure of the Governor. Thus, the appointment of a Minister is in accordance with the pleasure of the Governor, which in turn, is dependent on the advice of the Chief Minister. The discretion of the Governor in the appointment of the Chief Minister is circumscribed by the limitation that the leader enjoying the majority in the State Legislature has necessarily to be selected.

32. Article 164 of the Constitution of India also provides for other provisions as regards the Ministers. Article 164(4) envisages that a Minister, who for any period of six consecutive months, is not a Member of the Legislature of the State shall at the expiration of that period cease to be a Minister. Thus, the qualification for the Minister, *inter alia*. is that he must be either a Member of the Legislature or become a Member within six months of assumption of office. A person thus qualified to be a Minister will be disqualified to be so if he ceases to be a

Member of the Legislature on account of any of the provisions of Articles 190 to 193 of the Constitution.

33. It is trite and well-settled law that once an office dependent on pleasure is held under a valid title, its continuance is also dependent on the doctrine of pleasure. Thus, the Ministers, inclusive of the Chief Minister, are entitled to hold office as long as they enjoy the pleasure of the Governor, which pleasure is dependent on the advice of the Chief Minister in the case of Ministers and confidence of the majority of the House in the case of the Chief Minister. This is a constitutional mandate which cannot be overridden by a Legislation of the State Legislature.

34. Similarly, Articles 190 to 193 of the Constitution of India provide for disqualification of Members of the State Legislature. Apart from the various disqualifications stated therein, Article 191(1)(e) provides that a person shall be disqualified for being chosen as, and for being, a Member of the Legislature if he is so disqualified under or by any law made by the Parliament.

Provisions in any State Legislation, inclusive of pre-amended Section 14 of the Act, cannot entail disqualification from the membership of the Legislature.

35. The report and findings submitted by the Lok Ayukta and Upa Lok Ayukta under Section 12 of the KLAA are recommendatory in nature. However, sub-section (1) of Section 14 of the KLAA stipulates that the Competent Authority shall accept the declaration made by the Lok Ayukta in terms of the report under sub-section (3) of Section 12, which stipulation is mandatory in nature. This contradiction between Sections 12 and 14 of the KLAA had to be rectified. Further, Section 14 of the KLAA was to be brought into conformity with the constitutional provisions. Moreover, there is no provision analogous to the erstwhile Section 14 of the KLAA in similar statues of other States. All these factors necessitated amendment to Section 14.

36. In distinguishing the decisions relied upon by the learned Senior Counsel, Mr. George Poonthottam, it is submitted that

the analogy attempted to be drawn by the petitioners with regard to the declaration of Article 371-D (5) to be violative of basic structure doctrine is not applicable in the facts and circumstances of the case at hand, in so far as the function of the Lok Ayukta, for the reasons mentioned above, is only investigative in nature and cannot be by any stretch, equated at par with a Tribunal or a Court.

37. The decision of the Hon'ble Supreme Court in ***Madras Bar Association v. Union of India and Others***[9] is not applicable to the facts and circumstances of the present case, as the Amendment Act, amending Section 14 of the KLAA cannot, for the reasons aforementioned, be stated to make inroads into the judicial sphere or to violate the principles of separation of powers, judicial independence and the Rule of Law. Likewise, the decisions in ***Samba Murthy v. State of Andhra Pradesh***[10], ***M.P. High Court Bar Association v. Union of India and Others***[11] and ***Amrik Singh Lyallpuri*** (supra) are

[9] (2022) 12 SCC 455
[10] AIR 1987 SC 663
[11] AIR 2005 SC 4114

also inapplicable to the facts and circumstances of the present case.

38. In the conspectus of these facts and circumstances of the case and the arguments advanced by the learned Senior Counsel for the petitioner and Mr. N. Prakash, the party-in-person, the validity of the amendments to Sections 3 and 14 of the KLAA is required to be considered.

39. The Kerala Lok Ayukta Act, 1999 came into force on 4th March 1999. The statement of objects and reasons of KLAA would show that the State Government in order to eliminate corruption in public service and strengthen the existing vigilance measure in the State and in consideration of the Kerala Public Men's Corruption (Investigations and Inquiries) Act, 1987 (for short, the 'KPMCA') in force in the State decided to bring about this legislation since the KPMCA was found to be not sufficient to effectively prevent the corruption among public servants. Hence, the Government considered it necessary to widen the ambit of the legislation by including all the

Government servants, the members and the person in service of local authority, statutory and non-statutory bodies and Co-operative Societies within the purview of the Act. The KLAA thus is a comprehensive new legislation for the effective enquiry and investigation of complaints against public servants and matters connected therewith or ancillary thereto.

40. The said Act was amended by Act 2 of 2000. Noticing certain inconsistencies between Section 22 of the KLAA and Rule 37 of the Kerala Government Servants Conduct Rules 1960, an amendment was brought to exclude the Last Grade employees of the Corporation, Boards etc., who are already governed by Rule 37 of the Kerala Government Servants Conduct Rules, 1960. The purpose to the said legislation, as would appear from the Preamble, is to make provision for the appointment and functions of certain authorities for making enquires into any action (including an omission or commission in connection with or arising out of such action) relating to matter specified in List II or List III of the Seventh Schedule of

the Constitution of India taken by or on behalf of the Government of Kerala or certain public authorities in the State of Kerala in certain cases and for matters connected therewith and ancillary thereto. The said Act is a complete code irrespective of the matters concerning enquiry into the allegation or grievance made by a person before the Lok Ayukta and the Lok Ayukta has been invested with all the powers of investigation, enquiry and for initiation of prosecution after investigation.

41. In order to appreciate the quality of the merits of challenge of the writ petitions, it is necessary to refer to few of the provisions of the said KLAA in order to understand the nature of the amendments carried out to such provisions and whether such amendments are legally permissible or could be a subject matter of challenge in a writ petition.

42. To start with, we may refer to the unamended definition of "competent authority", that is to say, as it was in the Statute from 1999 until 2nd March 2024. "Competent authority" is

defined under Section 2(d) of the KLAA, which reads as follows:

> "(d) "competent authority", in relation to a public servant, means-
>
> (i) in the case of the Chief Minister or a Member of the State Legislature, or an office bearer of a political party, at the State level, the Governor acting in his discretion;
>
> (ii) in the case of a Minister or Secretary, the Chief Minister;
>
> (iii) in the case of an officer of the All India services, employed in connection with the affairs of the State, the Minister concerned;
>
> (iv) in the case of any other public servant, such authority, as may be prescribed."
>
> (emphasis supplied)

43. Pursuant to the Kerala Lok Ayukta (Amendment) Act, 2022, amongst others, the said definition clause was amended in the manner as follows:

> "(a) for the existing item (i), the following shall be substituted, namely:-

"(i) in the case of the Chief Minister, the State Legislative Assembly;"

(b) after item (i), the following items shall be inserted, namely:-

"(ia) in the case of Member of the State Legislative Assembly, the Speaker of the State Legislature Assembly:"

(emphasis supplied)

44. Similarly, Section 14 has been amended which essentially has replaced the heading of the Section from "Public Servant to vacate office if directed by the Lok Ayukta etc." to "Recommendation of the Lok Ayukta or Upa Lok Ayukta and action thereon" (emphasis supplied).

45. The original and the amended sections are given in a tabular form as under:

Pre-amendment	Post-amendment
"14. Public Servant to vacate office if directed by Lok Ayukta etc." (1) Where, after investigation into a complaint, the Lok	"14. Recommendation of the Lok Ayukta or Upa-Lok Ayukta and action thereon- (1) Where, after investigation into a complaint, the Lok

Ayukta or an Upa-Lok Ayukta is satisfied that the complaint involving an allegation against the public servant is substantiated and that the public servant concerned should not continue to hold the post held by him, the Lok Ayukta or the Upa-Lok Ayukta, as the case may be, shall make a declaration to that effect in his report under sub-section (3) of Section 12. Where the competent authority is the Governor, the Government of Kerala or the Chief Minister, he or it shall accept the declaration. In other cases, the competent authority concerned shall send a copy of such report to the Government, which shall accept the declaration. (2) When the declaration so made is accepted, the fact of such acceptance shall immediately be intimated by registered post, by the Governor, the Government or the Chief Minister, if any of them is the competent authority and the Government, in other cases and then,	Ayukta or an Upa-Lok Ayukta is satisfied that the complaint involving an allegation against the public servant is substantiated and the public servant is not fit to hold the post as such, the Lok Ayukta or Upa-Lok Ayukta, as the case may be, shall make a recommendation to the competent authority to that effect in its report under sub-section (3) of Section 12. (2) The competent authority shall examine the recommendation made by the Lok Ayukta or Upa-Lok Ayukta, as the case may be, and communicate to the Lok Ayukta or Upa-Lok Ayukta, as the case may be, within a period of ninety days from the date of receipt of the report, the action taken or proposed to be taken on the basis of the recommendation or the reasons for not taking any action on the said recommendation: Provided that where the competent authority is the State Legislative Assembly, in computing the period of ninety days, any period during which

notwithstanding anything contained in any law, order, notification, rule or contract of appointment, the public servant concerned shall, with effect from the date of intimation of such acceptance or deemed acceptance of the declaration- (i) if he is the Chief Minister or a Minister, resign his office of Chief Minister or Minister, as the case may be; (ii) if he is a public servant falling under items (v) and (vi), but not falling under items (iv) and (vii) of Clause (o) of Section 2, be deemed to have vacated his office; and iii) if he is a public servant falling under items (iv) and (vii) of Clause (o) of Section 2, be deemed to have been placed under suspension by an order of the appointing authority and the appointing authority shall initiate appropriate action in accordance with the rules applicable to such public servant: Provided that if the public servant is a member of an All	the State Legislative Assembly is not in session, shall be excluded. (3) In the case of a public servant falling under items (iv) to (vii) of clause (o) of section 2, the appointing authority shall initiate appropriate action in accordance with the rules or regulations applicable to the service of such public servants. (4) If the public servant is a member of All India Service as defined in section 2 of the All-India Services Act, 1951 (Central Act 61 of 1951), the Government shall take appropriate action in accordance with the rules or regulations applicable to his service."

India Service as defined in Section 2 of the All India Services Act, 1951 (General Act 61 of 1951), the Government shall take action to keep him under suspension and initiate appropriate action in accordance with the rules or regulations applicable to his service.	

(emphasis supplied)

46. While in the definition of "competent authority", the power of the "Governor" acting in his discretion has been replaced with the "State Legislative Assembly" in relation to the Chief Minister, the imperative and compulsive force of the report of the Lok Ayukta prepared following the procedure as prescribed in Sections 9 and 10 of the KLAA is now to be treated as "recommendation" instead of "declaration". The Legislature has thus diluted the efficacy and enforceability of the report of the Lok Ayukta from a "declaration" to a "recommendation". However, as would appear from Section 14(2), the Legislature in the case of the "Chief Minister" would be required to examine

the recommendation within a period of 90 days from the date of receipt of the report, the action taken or proposed to be taken on the basis of the recommendation or the reasons for not taking any action on the said recommendation and in computing the period of 90 days any period during which the State Legislative Assembly is not in session would be excluded. This change in the entire complexion of the Statute, from its initial strong enforceability being diluted to a recommendation and to be left to the discretion of the State Legislature, has been criticized and objected to by the writ petitioners as it is perceived to be against the rule of law and the Preamble of the said Statute.

47. Based on such perception and understanding of the original and the unamended sections of the KLAA and the objects it seeks to achieve, it has been strenuously argued that conferring power on the Executive to exercise appellate jurisdiction over a "declaration" now changed to "recommendation" would be against the fundamental concept of

the rule of law, independence of Judiciary and separation of powers as envisaged in the Constitution of India.

48. The argument that the amendments thus bring about a fundamental alteration in the nature and effective enforceability of the powers of the Lok Ayukta under the KLAA is clearly visible from the amendments itself.

49. The principal contention of the writ petitioners is that, by reason of the amendments introduced to Sections 3 and 14 of the KLAA, the efficacy of the institution has been substantially diluted. Put pithily, it would mean that the statutory provisions now have been rendered virtually toothless — it may bark, but can no longer bite. According to the petitioners, the substitution of a binding declaration with a mere recommendation denudes the Lok Ayukta of its effective authority and reduces its determinations to advisory opinions, dependent entirely upon executive acceptance.

50. The amendments thus reflect a paradigm shift regarding the nature of enforceability of the reports under the KLAA. Now,

let us examine the true nature and character of the Lok Ayukta. It is a statutory authority created to inquire into allegations of corruption, maladministration, or abuse of office against public servants. It is empowered to conduct investigations, summon witnesses, receive evidence and render findings based on the material placed before it; its powers are circumscribed by the statute that constitutes it. The Hon'ble Supreme Court in ***Justice Chandrashekaraiah v. Janekere C. Krishna and Ors.***[12], has discussed similar provisions and held as follows:

> "Provisions of Sections 9, 10 and 11 clearly indicate that Lokayukta and Upa Lokayukta are discharging quasi-judicial functions while conducting the investigation under the Act. Sub-section (2) of Section 11 of the Act also states that for the purpose any such investigation, including the preliminary inquiry Lokayukta and Upa Lokayukta shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in the matter of summoning and enforcing the attendance of any person and examining him on oath. Further they have also the

[12] (2013) 3 SCC 117

> power for requiring the discovery and production of any document, receiving evidence on affidavits, requisitioning any public record or copy thereof from any court or office, issuing commissions for examination of witnesses of documents etc. Further, Sub-section (3) of Section 11 stipulates that any proceedings before the Lokayukta and Upa Lokayukta shall be deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code. Therefore, Lokayukta and Upa Lokayukta, while investigating the matters are discharging quasi-judicial functions, though the nature of functions is investigative".
>
> *** (emphasis supplied)

51. In the course of examining the distinction between courts, tribunals and other statutory authorities and while referring to the decision of the Constitution Bench in ***The Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank Ltd., Delhi***[13], the Hon'ble Supreme Court has characterised the Lok Ayukta and Upa-Lokayukta as *sui generis* quasi-judicial authorities. The Court observed that the final decision rendered by the Lok

---

[13] (1950) SCR 459

Ayukta or Upa-Lokayukta, described as a report, may not bear the stamp of a judicial decision as would that of a court or, to a lesser extent, a tribunal. Nevertheless, in formulating such a report, the Lok Ayukta and Upa-Lokayukta are required to consider the point of view of the person complained against and to ensure that the investigation reaches its logical conclusion, one way or the other, without any interference and without fear. At the same time, the Court clarified that the report of the Lok Ayukta does not determine the rights of either the complainant or the person complained against. It is for this reason that the Hon'ble Supreme Court held that the Lok Ayukta and the Upa-Lokayukta cannot be regarded as courts or tribunals, but are best described as *sui generis* quasi-judicial authorities.

52. Therefore, in our view, the mere fact that the Lok Ayukta follows a procedure resembling adjudication does not *ipso facto* elevate it to the status of a court or tribunal exercising plenary judicial power and for this reason, it occupies a distinct position as a *sui generis* quasi-judicial authority under the

statutory scheme.

53. The submission made by the petitioners that the impugned amendments trench upon the domain of a judicial or quasi-judicial authority cannot be accepted. The amendments were enacted to harmonise the provisions of the Lok Ayukta Act with the constitutional framework, rather than to subvert it. The constitutional scheme relating to Ministers, as embodied in Articles 163 and 164 of the Constitution, makes it abundantly clear that Ministers hold office during the pleasure of the Governor, and their continuance in office cannot be rendered mechanically contingent upon the findings or recommendations of a statutory authority. The argument of the learned Advocate General that to that extent, the pre-amended Section 14, which mandated resignation upon acceptance of a declaration made by the Lok Ayukta, did give rise to issues of constitutional incongruity, might operate harshly. Therefore, the said amendment seeks to remove such inconsistency and align the statutory mechanism with constitutional mandates.

54. We also took note of the judgments relied upon by the petitioners in the cases of ***Madras Bar Association***, ***M.P. High Court Bar Association*** *(supra)* and ***Amrik Singh Lyallpuri*** *(supra)* where the court solely deals with executive encroachment upon core judicial functions, particularly in the context of tribunals exercising powers previously vested in constitutional courts. The present case does not involve such a transfer or dilution of judicial power.

55. Though the Lok Ayukta and the Upa-Lokayukta perform quasi-judicial functions and occupy a unique position as *sui generis* quasi-judicial authorities, they are neither courts nor tribunals exercising plenary judicial power. Their reports, however, arrived at through a fair and independent process, do not determine the rights of parties in the manner of judicial adjudication. Consequently, the substitution of a binding declaration with a recommendation, coupled with an obligation on the competent authority to record and communicate reasons, cannot be construed as conferring appellate powers on

the executive or as an impermissible encroachment into the judicial domain.

56. The impugned amendments do not dilute the independence of the Lok Ayukta, nor do they interfere with the administration of justice. On the contrary, the impugned amendments seek to bring the statutory framework in consonance with the constitutional scheme, as discussed earlier, under which, Ministers hold office during the pleasure of the Governor and cannot be compelled to demit office solely on the basis of a statutory declaration. The Legislature was well within its competence to re-calibrate the consequences flowing from a report of the Lok Ayukta, without denuding the institution of its essential character or effectiveness.

57. The apprehension of bias founded on the doctrine of *nemo judex in causa sua* is equally untenable. The amendment does not institutionalise bias nor does it immunise executive action from judicial scrutiny. Any arbitrary, mala fide, or unreasonable decision taken by the competent authority in

response to a recommendation of the Lok Ayukta remains amenable to judicial review.

58. The amendment also does not offend the requirements of procedural fairness. The investigative and quasi-judicial process before the Lok Ayukta remains intact, including adherence to principles of natural justice and reasoned decision-making. Under the substituted Section 14, the competent authority is not vested with unbridled discretion; it is obligated to examine the recommendation and communicate the action taken or the reasons for declining to act. Such a decision is amenable to judicial review. Therefore, the statutory scheme, as amended, preserves fairness at both stages — at the level of inquiry and at the level of executive response — and cannot be characterised as arbitrary or procedurally unjust.

59. In view of the foregoing discussion, we hold that the amendment to Section 14 of the Kerala Lok Ayukta Act, 1999 does not violate the doctrine of separation of powers, the principle of judicial independence or the basic structure of the

Constitution. The writ petitions, therefore, fail and are accordingly dismissed.

60. The learned Senior Counsel Mr. George Poonthottam has in all fairness concede to the situation that the legislative competence is not in question and it cannot be argued that the Legislature do not have the power to bring about such amendments. But, he would rather contend that such legislation has to be tested on the ground of arbitrariness or effect offence of any of the Articles of the Constitution.

61. In the background of the aforesaid submissions, it is necessary to refer to few paragraphs from the decision of the Hon'ble Supreme Court in ***Anjum Kadari*** (supra) where the ground on which a Statute can be declared *ultra vires.* The elaborate discussions on these issues are discernable from paragraphs 48 to 56 as follows:

> "48. The Constitution imposes certain limitations on the legislative powers of Parliament and the State Legislatures. Article 13(2) provides that the State shall

not make any law that takes away or abridges the rights conferred by Part III. Statutes enacted by the State Legislatures must be consistent with the fundamental rights enumerated under Part III of the Constitution. Further, Article 246 defines the scope and limitations of the legislative competence of Parliament and State Legislatures. A statute can be declared ultra vires on two grounds alone: (i) it is beyond the ambit of the legislative competence of the legislature; or (ii) it violates Part III or any other provision of the Constitution. [*State of A.P.* v. *McDowell & Co.*, (1996) 3 SCC 709, pp. 737-38, para 43 "43. ... The power of Parliament or for that matter, the State Legislatures is restricted in two ways. A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone viz. (1) lack of legislative competence; and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision."; *State of Kerala v. Peoples Union for Civil Liberties*, (2009) 8 SCC 46, para 45]

49. In *Indira Nehru Gandhi v. Raj Narain [Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1], the Allahabad High Court disqualified the then Prime

Minister for indulging in corrupt practices according to the Representation of the People Act, 1951. To nullify the decision of the High Court, Parliament enacted the Representation of the People (Amendment) Act, 1974 and the Election Laws (Amendment) Act, 1975 and placed them under the Ninth Schedule to the Constitution. The issue before this Court was whether the amendments violated the basic structure of the Constitution.

50. A.N. Ray, C.J. in *Indira Nehru Gandhi case* [*Anshuman Singh Rathore v. Union of India*, 2024 SCC OnLine All 857] held that the constitutional validity of a statute depends entirely on the existence of the legislative power and the express provision in Article 13. Since the legislation is not subject to any other constitutional limitation, applying the basic structure doctrine to test the validity of a statute will amount to "rewriting the Constitution". [*Indira Nehru Gandhi case*, 1975 Supp SCC 1, paras 134 and 137] The learned Judge further observed that application of the undefinable theory of basic structure to test the validity of a statute would denude legislatures of the power of legislation and deprive them of laying down legislative policies. [*Indira Nehru Gandhi case*, 1975

Supp SCC 1, p. 61, para 136 “136. The theory of basic structures or basic features is an exercise in imponderables. Basic structures or basic features are indefinable. The legislative entries are the fields of legislation. The pith and substance doctrine has been applied in order to find out legislative competency, and eliminate encroachment on legislative entries. If the theory of basic structures or basic features will be applied to legislative measures it will denude Parliament and State Legislatures of the power of legislation and deprive them of laying down legislative policies. This will be encroachment on the separation of powers.”] K.K. Mathew, J. similarly observed that the concept of a basic structure is “too vague and indefinite to provide a yardstick to determine the validity of an ordinary law”. [*Indira Nehru Gandhi case*, 1975 Supp SCC 1, para 357] Y.V. Chandrachud, J. (as the learned Chief Justice then was) observed that constitutional amendment and ordinary laws operate in different fields and are subject to different limitations. [*Indira Nehru Gandhi case*, 1975 Supp SCC 1, pp. 261-62, paras 691 and 692“*691*. … The constitutional amendments may, on the ratio of the *Fundamental Rights case* [*Kesavananda Bharati* v. *State of Kerala*,

(1973) 4 SCC 225], be tested on the anvil of basic structure. But apart from the principle that a case is only an authority for what it decides, it does not logically follow from the majority judgment in the *Fundamental Rights case* [*Kesavananda Bharati* v. *State of Kerala*, (1973) 4 SCC 225] that ordinary legislation must also answer the same test as a constitutional amendment. Ordinary laws have to answer two tests for their validity: (*1*) The law must be within the legislative competence of the legislature as defined and specified in Chapter I, Part XI of the Constitution, and (*2*) it must not offend against the provisions of Articles 13(1) and (*2*) of the Constitution. "Basic structure", by the majority judgment, is not a part of the fundamental rights nor indeed a provision of the Constitution. The theory of basic structure is woven out of the conspectus of the Constitution and the amending power is subjected to it because it is a constituent power. "The power to amend the fundamental instrument cannot carry with it the power to destroy its essential features" — this, in brief, is the arch of the theory of basic structure. It is wholly out of place in matters relating to the validity of ordinary laws made under the Constitution."]

51. The majority in *Indira Nehru Gandhi* [*Indira Nehru Gandhi* v. *Raj Narain*, 1975 Supp SCC 1] held that the constitutional validity of a statute cannot be challenged for the violation of the basic structure doctrine. However, M.H. Beg, J. (as the learned Chief Justice then was) dissented with the majority view by observing that the basic structure test can be used to test the validity of statutes because statutes cannot go beyond the range of constituent power. [*Indira Nehru Gandhi* v. *Raj Narain*, 1975 Supp SCC 1, para 622]

52. In *State of Karnataka* v. *Union of India* [*State of Karnataka* v. *Union of India*, (1977) 4 SCC 608, para 238], N.L. Untwalia, J. (writing for himself, P.N. Shinghal, J., and Jaswant Singh, J.) reiterated that the validity of a statute cannot be tested for violation of the basic structure of the Constitution. Y.V. Chandrachud, J. (as the learned Chief Justice then was) also observed that a statute cannot be invalidated on supposed grounds so long as it is within the legislative competence of the legislature and consistent with Part III of the Constitution. [*State of Karnataka case*, (1977) 4 SCC 608, para 197] However, M.H. Beg, C.J. observed that testing a statute for violation of basic structure does not "add to the contents of the

Constitution”. [*State of Karnataka case*, (1977) 4 SCC 608, para 128] He held that any inference about a limitation based on the basic structure doctrine upon legislative power must co-relate to the express provisions of the Constitution. [*State of Karnataka case*, (1977) 4 SCC 608, para 123]

53. In *Kuldip Nayar v. Union of India [Kuldip Nayar v. Union of India*, (2006) 7 SCC 1, p. 67, para 107 “107. The basic structure theory imposes limitation on the power of Parliament to amend the Constitution. An amendment to the Constitution under Article 368 could be challenged on the ground of violation of the basic structure of the Constitution. An ordinary legislation cannot be so challenged. The challenge to a law made, within its legislative competence, by Parliament on the ground of violation of the basic structure of the Constitution is thus not available to the petitioners.”] a Constitution Bench held that ordinary legislation cannot be challenged for the violation of the basic structure of the Constitution. Statutes, including State legislation, can only be challenged for violating the provisions of the Constitution. [*Ashok Kumar Thakur* v. *Union of India*, (2008) 6 SCC 1 : 3 SCEC 35, para 116] However,

in *Madras Bar Assn.*v. *Union of India* [*Madras Bar Assn.* v. *Union of India*, (2014) 10 SCC 1, p. 190, para 109 : (2014) 187 Comp Cas 426 : (2014) 368 ITR 42 : (2014) 29 GSTR 12 : (2014) 75 VST 12 "109. ... This Court has repeatedly held that an amendment to the provisions of the Constitution would not be sustainable if it violated the "basic structure" of the Constitution, even though the amendment had been carried out by following the procedure contemplated under "Part XI" of the Constitution. This leads to the determination that the "basic structure" is inviolable. In our view, the same would apply to all other legislations (other than amendments to the Constitution) as well, even though the legislation had been enacted by following the prescribed procedure, and was within the domain of the enacting legislature, any infringement to the "basic structure" would be unacceptable."] a Constitution Bench applied the basic structure doctrine to test the validity of parliamentary legislation seeking to transfer judicial power from High Courts to tribunals. J.S. Khehar, J. (as the learned Chief Justice then was), writing for the Constitution Bench, held that the basic structure of the Constitution will stand violated if Parliament does not ensure that the newly created

tribunals do not “conforms with the salient characteristics and standards of the court sought to be substituted”. [*Madras Bar Assn. case*, (2014) 10 SCC 1, p. 218, para 136 : (2014) 187 Comp Cas 426 : (2014) 368 ITR 42 : (2014) 29 GSTR 12 : (2014) 75 VST 12“*136*. … (*iii*) The “basic structure” of the Constitution will stand violated if while enacting legislation pertaining to transfer of judicial power, Parliament does not ensure that the newly created court/tribunal conforms with the salient characteristics and standards of the court sought to be substituted.”]

54. In *Supreme Court Advocates-on-Record Assn.* v. *Union of India* [*Supreme Court Advocates-on-Record Assn.* v. *Union of India*, (2016) 5 SCC 1] this Court had to decide the constitutional validity of the Constitution (Ninety-ninth Amendment) Act, 2014 and the National Judicial Appointments Commission Act, 2014. J.S. Khehar, J. (as the learned Chief Justice then was) built upon his reasoning in *Madras Bar Assn.* [*Madras Bar Assn.* v. *Union of India*, (2014) 10 SCC 1 : (2014) 187 Comp Cas 426 : (2014) 368 ITR 42 : (2014) 29 GSTR 12 : (2014) 75 VST 12] by observing that a challenge to ordinary legislation for violation of the basic structure would only be a “technical flaw”

and "cannot be treated to suffer from a legal infirmity". [*Supreme Court Advocates-on-Record Assn.* v. *Union of India*, (2016) 5 SCC 1, para 381] He observed that the determination of the basic structure of the Constitution is made exclusively from the provisions of the Constitution. The observations of the learned Judge are instructive and extracted below: (*Supreme Court Advocates-on-Record Assn.* [*Supreme Court Advocates-on-Record Assn.* v. *Union of India*, (2016) 5 SCC 1, para 381], SCC p. 451, para 381)

> "*381.* … when a challenge is raised to a legislative enactment based on the cumulative effect of a number of articles of the Constitution, it is not always necessary to refer to each of the articles concerned when a cumulative effect of the said articles has already been determined as constituting one of the "basic features" of the Constitution. Reference to the "basic structure" while dealing with an ordinary legislation would obviate the necessity of recording the same conclusion which has already been scripted while interpreting the article(s) under reference harmoniously. We would therefore reiterate that the "basic structure" of the Constitution is inviolable and as such the Constitution cannot be amended so as to negate any "basic features" thereof, and so also, if a challenge is raised to an ordinary legislation based on one of the "basic features" of the Constitution, it would be valid to do so. If such a challenge is

> accepted on the ground of violation of the "basic structure", it would mean that the bunch of articles of the Constitution (including the Preamble thereof, wherever relevant), which constitute the particular "basic feature", had been violated. We must however credit the contention of the learned Attorney General by accepting that it would be technically sound to refer to the articles which are violated, when an ordinary legislation is sought to be struck down as being ultra vires the provisions of the Constitution."

55. However, Lokur, J. in *Supreme Court Advocates-on-Record Association* [*Supreme Court Advocates-on-Record Assn.* v. *Union of India*, (2016) 5 SCC 1] differed with J.S. Khehar, J. on the issue of testing the validity of a statute for violation of the basic structure doctrine. Lokur, J. followed the view of the majority in *State of Karnataka* [*State of Karnataka v. Union of India*, (1977) 4 SCC 608. *SupremeCourt Advocates-on-RecordAssn.* v. *Union of India*, (2016) 5 SCC 1, p. 621, para 795"*795.* For the purposes of the present discussion, I would prefer to follow the view expressed by a Bench of seven learned Judges in *State of Karnataka* v. *Union of India*, (1977) 4 SCC 608 [seven-Judge Bench] that it is only an amendment of the Constitution that can be challenged on the ground that it violates the basic structure of the

Constitution—a statute cannot be challenged on the ground that it violates the basic structure of the Constitution. [The only exception to this perhaps could be a statute placed in the Ninth Schedule to the Constitution.] The principles for challenging the constitutionality of a statute are quite different."] that a statute cannot be challenged for violating the basic structure doctrine.

56. From the above discussion, it can be concluded that a statute can be struck down only for the violation of Part III or any other provision of the Constitution or for being without legislative competence. The constitutional validity of a statute cannot be challenged for the violation of the basic structure of the Constitution. The reason is that concepts such as democracy, federalism, and secularism are undefined concepts. Allowing courts to strike down legislation for violation of such concepts will introduce an element of uncertainty in our constitutional adjudication. Recently, this Court has accepted that a challenge to the constitutional validity of a statute for violation of the basic structure is a technical aspect because the infraction has to be traced to the express provisions of the Constitution. Hence, in a challenge to the validity of

> a statute for violation of the principle of secularism, it must be shown that the statute violates provisions of the Constitution pertaining to secularism."
>
> *** (emphasis supplied)

62. Applying the aforesaid principle to the present legislation, which is admittedly an ordinary law and as observed in the aforesaid judgment, the validity of a Statute cannot be challenged for the violation of the basic structure of the Constitution, which, in fact, has reaffirmed the view expressed in ***State of Karnataka v. Union of India***[14], as referred to in paragraph 52 of the ***Anjum Kadari*** (supra).

63. Both sides have relied on ***Justice Chandrashekar (Retd)*** (supra) in support of their respective arguments. The main issue that came up for consideration before the Hon'ble Supreme Court was whether the views expressed by the Chief Justice of the High Court of Karnataka has got primacy while making appointment to the posts of Lok Ayukta or Upa Lok Ayukta by the Government of Karnataka in exercise of powers

---

[14] (1977) 4 SCC 608

conferred on them under Section 3(2)(a) and (b) of the Karnataka Lokayukta Act, 1984. In deciding the said issue, the Hon'ble Supreme Court has considered Sections 7, 8, 9, 11 and 12 of the Karnataka Lokayukta Act, which are in *pari materia* with Sections 7, 8, 9, 11 and 12 of the present Act. In fact, most of the States have same and/or similar provisions that are covered by the aforesaid Sections.

64. However, unlike Section 13 of the Karnataka Lokayukta Act, the original unamended Section 14, which is *pari materia* to Section 13 of the aforesaid Act, has bestowed power upon the competent authority either to accept or reject the declaration made by the Lok Ayukta or Upa Lok Ayukta under sub-section (3) of Section 12 of the Karnataka Lokayukta Act. For better appreciation, Section 13 of the Karnataka Lokayukta Act and unamended Section 14 are given in the following table.

Section 13 of the Karnataka Lokayukta Act	Unamended Section 14 of the KLAA
"13. Public servant to vacate office if directed by Lokayukta	"14. Public Servant to vacate office if directed by Lok

etc.-"	**Ayukta etc.**
1. Where after investigation into a complaint the Lokayukta or an Upalokayukta is satisfied that the complaint involving an allegation against the public servant is substantiated and that the public servant concerned should not continue to hold the post held by him, the Lokayukta or the Upalokayukta shall make a declaration to that effect in his report under sub-section (3) of section 12. Where the competent authority is the Governor, State Government or the Chief Minister, it may either accept or reject the declaration after giving an opportunity of being heard. In other cases, the competent authority shall send a copy of such report to the State	(1) Where, after investigation into a complaint, the Lok Ayukta or an Upa-Lok Ayukta is satisfied that the complaint involving an allegation against the public servant is substantiated and that the public servant concerned should not continue to hold the post held by him, the Lok Ayukta or the Upa-Lok Ayukta, as the case may be, shall make a declaration to that effect in his report under sub-section (3) of section 12. Where the competent authority is the Governor, the Government of Kerala or the Chief Minister, he or it shall accept the declaration. In other cases, the competent authority concerned shall send a copy of such report to the Government, which shall

Government, which may either accept or reject the declaration. If it is not rejected within a period of three months from the date of receipt of the report, or the copy of the report, as the case may be, it shall be deemed to have been accepted on the expiry of the said period of three months. 2. If the declaration so made is accepted or is deemed to have been accepted, the fact of such acceptance or the deemed acceptance shall immediately be intimated by Registered post by the Governor, the State Government or the Chief Minister if any of them is the competent authority and the State Government in other cases then, notwithstanding anything contained in any	accept the declaration. (2) When the declaration so made is accepted, the fact of such acceptance shall immediately be intimated by registered post, by the Governor, the Government or the Chief Minister, if any of them is the competent authority and the Government, in other cases and then, notwithstanding anything contained in any law, order, notification, rule or contract of appointment, the public servant concerned shall, with effect from the date of intimation of such acceptance or deemed acceptance of the declaration- (i) if he is the Chief Minister or a Minister, resign his office of Chief Minister or Minister, as the case may be;

law, order, notification, rule or contract of appointment, the public servant concerned shall, with effect from the date of intimation of such acceptance or of the deemed acceptance of the declaration, i. if the Chief Minister or a Minister resign his office of the Chief Minister, or Minister, as the case may be; ii. if a public servant falling under items (e) and (f), but not falling under items (d) and (g) of clause (12) of section 2, be deemed to have vacated his office; and iii. if a public servant falling under items (d) and (g) of clause (12) of section 2, be deemed to have been placed under suspension by an order of the appointing authority. Provided that if the public	(ii) if he is a public servant falling under items (v) and (vi), but not falling under items (iv) and (vii) of Clause (o) of Section 2, be deemed to have vacated his office; and iii) if he is a public servant falling under items (iv) and (vii) of Clause (o) of Section 2, be deemed to have been placed under suspension by an order of the appointing authority and the appointing authority shall initiate appropriate action in accordance with the rules applicable to such public servant: Provided that if the public servant is a member of an All India Service as defined in Section 2 of the All India Services Act, 1951 (General Act 61 of 1951), the Government shall take action

servant is a member of an All India Service as defined in section 2 of the All India Services Act, 1951 (Central Act 61 to 1951) the State Government shall take action to keep him under suspension in accordance with the rules or regulations applicable to his service.	to keep him under suspension and initiate appropriate action, in accordance with the rules or regulations applicable to his service.

(emphasis supplied)

65. However, unlike Section 13(1) of the Karnataka Lokayukta Act, 1984, where there is a provision for "deemed acceptance" of the declaration, there is no similar provision in Section 14(2) of the KLAA where the Statute is silent as to what happens in the event the State Legislature fails to take any decision upon expiry of 90 days. It cannot be the intention or desire of the Legislation and, in fact, it is not so to keep the matter suspended or sit over it indefinitely, otherwise, the period of 90 days would not have been mentioned in Section 14(2) of the

KLAA as amended.

66. It appears that while the State Legislature was considering of diluting the efficacy of the report from declaration to a recommendation on a consideration that there may be a violation of principles of natural justice for the person against whom the report has been filed by the Lok Ayukta or Upa Lok Ayukta as a declaration would be a *fait accompli* without any recourse as no appellate authority is prescribed under the said Act, it has never been the intention of the Legislature to make a mockery of the entire system or to make the entire process go for a toss. It was never intended to be an entirely wasteful and unnecessary exercise involving public exchequer. After all, it cannot be denied that the office of the Lok Ayukta has solemnity attached to it as being presided over by a retired Judge of the Hon'ble Supreme Court or the retired Chief Justice of a High Court, now replaced by a retired Judge of the High Court and it involves a detailed exercise to be carried out before it culminates into a report.

67. However, the reason for the amendment as argued by the learned Advocate General is a plausible reason for the amendment and the Court cannot in a judicial review decide the quality of such amendment and does not depend upon the perception of the Judge. It has to be tested on the anvil of the tests as laid down in ***Anjum Kadari*** (supra) to consider the quality and merits of such objections in deciding the constitutional validity of the Statute. However, as observed earlier, it is a duty upon the State Legislature, like the provisions made in the Karnataka Legislation under Section 13 with regard to deemed acceptance of such report in the event it is not accepted within the time frame as prescribed in Section 14(2) as amended. In fact, the learned Advocate General true to the tradition of the Bar and the Office that it commands has also fairly conceded to the fact that the said provision is required to be read into the same sub- section to give effectiveness to the Statute.

68. The Statute does not exclude judicial review of the action

taken or proposed to be taken or the rejection of the recommendation by the State Legislature. While the Lok Ayukta or Upa Lok Ayukta may not be a person aggrieved in the context of the report being rejected and no action is taken, it is always open for the complainant to file a writ petition challenging the decision of the State Legislature in not accepting the said recommendation of the Lok Ayukta on the grounds that may be available to such complainant. In fact, Section 12 used the word “recommendation” in sub-section (5) as opposed to a “declaration” which, however, in the unamended provision of Section 14, was considered to be a “declaration” although Section 12(3) refers to “recommendation” and not a “declaration”. When Section 12(3) is read with Section 14(1) unamended, there appears to be a dichotomy between the binding nature of the report, as it appears that at the stage of Section 12(3), it is only a recommendation which cannot be said to be of a binding nature, as it would not give any option unlike similar statues of having a re-look at the said report, as it is

treated as a “declaration” and is of a binding nature. It does not require any further deliberation or consideration, as envisaged in similar Statutes, nor does it require an opportunity of being heard. The said unamended provision is also likely to cause serious prejudice against whom an action is proposed. In fact, the Karnataka Lokayukta Act gives power to the competent authority either to accept or reject after giving an opportunity of being heard. The consequences are of a far sweeping nature given the wordings of Sections 12 and 14 as unamended. However, the amended provision in Section 14(2) contemplates a reason to be given by the Sate Legislature, which makes the State Legislature accountable for its decisions. The State Legislature shall be presumed to act bona fide upholding the Constitutional values and keeping in mind the object of the said Act profess in considering such recommendation.

69. There is another significant aspect in this matter which also requires a special mention. Under Section 12, the Lok Ayukta would be required to submit a report. Section 12(3)

contemplates action to be taken by the competent authority on the basis of the findings and recommendations made by the Lok Ayukta. At this stage, if it is in relation to the Chief Minister, then now by reason of the amendment, it has to be considered by the competent authority and under Section 12(4), the State Legislature would be required to examine the report within three months of the date of receipt of the report and intimate or cause to be intimated to the Lok Ayukta the action taken or proposed to be taken on the basis of the said report. However, the Lok Ayukta has been given power under Section 12(5) to either accept the action taken or proposed to be taken on the basis of the recommendation or can make a special report to the Governor expressing his reservation and also shall communicate to the State Legislature (now the competent authority in relation to the Chief Minister) and the complainant. The most significant provision is Section 12(7) which has not been amended that gives power to the Governor to forward such report which, after amendment, would be the State Legislature

in the case of the Chief Minister together with “an explanatory memorandum” to be laid before the Legislative Assembly.

70. Now, by virtue of the amendment, the report under Section 12(3) would not be considered any further as a declaration and it is now required to be placed before the State Legislature in the case of the Chief Minister to be considered in accordance with Section 14(2) of the Act as amended. Section 12(7) still retains the power of the Governor to make “an explanatory memorandum” in the event the recommendations are accepted by the State Legislature, but not implemented.

71. We, accordingly, are of the view that the State Legislature is competent to make such amendments, however, we make it clear that Section 14(2) contemplates that in the event said report is not rejected within the period of 90 days from the date of receipt of the report or the copy of the report, as the case may be, it shall be deemed to have been accepted on the expiry of the said period of three months and if it is deemed to have been accepted, the procedure under Section 12(5) would

immediately trigger. In fact, Sections 12(4) and 14(2) of the KLAA, in relation to the Chief Minister viz-a-viz the State Legislation, contemplate such procedure to be followed and any other interpretation to the said provisions would render Section 14(2) otiose, as in absence of "deemed acceptance", Section 12(5) stage would never come and make the other provisions redundant. In the absence of any amendment being carried out to the said sections and keeping in mind the laudatory object of the said Act, "deemed acceptance" beyond the time stipulated in Section 14(2) is a necessary corollary and an obvious consequence to follow. It completely aligns with Section 12(4) as it, by reason of amendment to Section 14(2), mandates the State Legislature to examine the report within three months and if Section 12(5) is read harmoniously with Sections 12(4) and 14(2) as amended, it is incumbent upon the State Legislature to intimate the Lok Ayukta the action taken or proposed to be taken on the basis of the report. The words "deemed acceptance" are read into the amended Section 14(2)

to make it effective and in consonance with the object of the Act and the other provisions of the Statute.

72. The power of the Court in exceptional circumstances to read into a Statute, has been recognised, *inter alia*, in the decision of the Hon'ble Supreme Court in ***X (Juvenile) v. State of Karnataka***[15], wherein, at paragraph 38, it was held as follows:

> *"38. The rule of casus omissus i.e. "what has not been provided in the statute cannot be supplied by the courts" is the strict rule of interpretation. However, there are certain exceptions thereto. Para 19 of the judgment of this Court in Surjit Singh Kalra v. Union of India [Surjit Singh Kalra v. Union of India, (1991) 2 SCC 87 : (1991) 1 SCR 364 : 1991 INSC 36] throws light thereon. The same is extracted below : (SCC p. 98)*
>
> > *"19. True it is not permissible to read words in a statute which are not there, but "where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a*

[15] (2024) 8 SCC 473

construction which deprives certain existing words of all meaning, it is permissible to supply the words' (Craies Statute Law, 7th Edn., p. 109). Similar are the observations in Hameedia Hardware Stores v. B. Mohan Lal Sowcar [Hameedia Hardware Stores v. B. Mohan Lal Sowcar, (1988) 2 SCC 513] , SCC at pp. 524-25 wherein it was observed that the court construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so as to reconcile the relevant provisions as to advance the remedy intended by the statute. (See : Siraj-ul-Haq Khan v. Sunni Central Board of Wakf [Siraj-ul-Haq Khan v. Sunni Central Board of Wakf, 1958 SCC OnLine SC 27 : 1959 SCR 1287 : AIR 1959 SC 198] , SCR at p. 1299)".

***

73. Similarly, in ***Rajbir Singh Dalal v. Chaudhari Devi Lal University***[16], the Hon'ble Supreme Court held as follows:

"13.......where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or

---

16 (2008) 9 SCC 284

> *adopting a strict construction which leads to absurdity or deprives certain existing words of all meaning, and in this situation it is permissible to supply the words (vide Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., pp. 71-76)."*

*****

The said principles are also equally applicable to bring out the essence of the legislation, as without such "deemed acceptance", the purpose of the Statute would stand defeated.

74. Considering the nature of the complaint, it is desirable that the original provision with regard to the appointment of a person who has held the office of the Chief Justice of the High Court may be restored as it appears that the original Act has equated a retired Judge of the Supreme Court with that of the retired Chief Justice of the High Court and the amendment has only replaced the retired Chief Justice of the High Court by a retired Judge of the High Court. We could not find any rational basis for such changes being made in Section 3(2). However, it is for the Legislature to decide taking into consideration the

observations made in this judgment.

75. The writ petitions are disposed of with the above clarification and interpretation of Section 14(2) of the KLAA in relation to the enforceability of the recommendations. The challenge to the constitutional validity of Sections 3 and 14 (as amended) herein fails.

Sd/-

SOUMEN SEN,
CHIEF JUSTICE

Sd/-

SYAM KUMAR V.M.,
JUDGE

uu/eb/jjj

APPENDIX OF WP(C) NO. 11107 OF 2024

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE KERALA LOK AYUKTA (AMENDMENT) ACT, 2022, ACT 7 OF 2024 PUBLISHED IN KERALA GAZETTE EXTRAORDINARY NO.805 DATED 2.3.2024 VIDE NOTIFICATION NO.1482/LEG.E2/2022/LAW DATED 2ND MARCH, 2024**

APPENDIX OF WP(C) NO. 18749 OF 2024

PETITIONER EXHIBITS

Exhibit -P1	**A TRUE COPY OF THE LOK AYUKTA AMENDMENT ACT 2022 (ACT 7 OF 2024) PUBLISHED IN THE GAZETTE BEARING NO. 1482/LEG.E2/2022/LAW DATED 02.03.2024**