

**IN THE HIGH COURT OF KARNATAKA AT BANGALORE**

**(ORIGINAL JURISDICTION)**

**WRIT PETITION NO. OF 2019**

**BETWEEN:**

**PETITIONER**

**AND**

**1. Government of Karnataka  
by its Chief Secretary  
Vidhana Soudha  
Dr. Amedkar Road  
Bengaluru-560001**

**2. Deputy Secretary to Government,  
Department of Personal and  
Administrative Reforms (Vigilance)  
Vidhana Soudha, Bangalore 560001**

**3. Secretariat to the Governor of Karnataka,  
Raj Bhavan, Raj Bhavan Road,  
Bangalore 560001**

**4. Shri Bhimanagouda Sanganagouda Patil,  
*Judge (Rtd), High Court of Karnataka*  
Upa-Lokayukta, Multi-storeyed Building  
Dr. Ambedkar Road, Bangalore 560001.**

**RESPONDENTS**

**MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA**

**The Petitioner above named submits as hereunder:**

1. In the present petition, which is filed in public interest, the petitioner seeks writ of *Quo Warranto* declaring that respondent 4 has no authority to hold and continue to hold the public office of Karnataka Upa-Lokayukta. The petitioner also challenges, in public interest, the order dated 20 November 2019 issued by the Governor of Karnataka appointing 4<sup>th</sup> respondent as Karnataka Upa-Lokayukta as being contrary to the provisions of the Karnataka Lokayukta Act, 1984 and the law declared by this Hon'ble Court and the Hon'ble Supreme Court of India. It is submitted that this petition is presented in public interest to maintain institutional integrity of the public institution meant for prevention and eradication of corruption in the State of Karnataka. The petitioner has no personal interest in the subject matter. The factual antecedents leading to the presentation of this petition are stated as hereunder:

**STATEMENT OF FACTS**

2. It is submitted that the petitioner Samaj Parivathana Samudaya (SPS) is a voluntary organisation working in Karnataka, and other parts of India since 1984. It works in close co-operation with several other voluntary organisations, networks and movements, to promote actions with people's power of participation on a broader scale towards social transformation and to bring about larger collective impacts on the governmental policies, deliberated legislations and programmes for human-wellbeing.

3. The petitioner Samaj Parivathana Samudaya is also engaged in activities for the betterment of the society in general and for protection of Natural Resources; *Jal, Jungle, Jameen, Khaneej* and *Beej* in particular. The appellant has been working in the said

direction for more than three decades and has been continuing as a guide and a source of inspiration for SPS and other similarly placed organisations. The fight against corruption is a major focus of SPS and it has filed several successful PILS in the Supreme Court of India and this Hon'ble Court.

4. It is submitted that the petitioner's efforts to highlight public causes and public interest concerns by seeking judicial redressal in a number of litigations initiated before the Hon'ble Supreme Court of India in (2013) 8 SCC 154 in the case of *Samaj Parivartana Samudaya vs. State of Karnataka*, (2012) 7 SCC 407 in the case of *Samaj Parivartana Samudaya vs. State of Karnataka* and also before the Hon'ble High Court of Karnataka (W.P. 15511-14/2013) in the case of *Samaj Parivartana Samudaya vs. Union of India and others* demonstrate the petitioner's concern for preservation of the natural resources and its fight against corruption at all levels. As a matter of fact, as far back as in 1997, the founder President of the appellant filed an Interlocutory Application 60/1997 (*S.R. Hiremath Vs. Madhya Pradesh and others*) in W.P. 202/1995 relating to protection of Forest and *Adivasi*. The said Writ Petition pertains to dealing with the Timber Mafia in which two reports by the Lokayukta of Madhya Pradesh were relied on and orders were passed for criminal investigation and prosecution of the high and powerful persons by the Forest Bench of the Hon'ble Supreme Court of India. The on-going fight against illegal mining, initiated by the appellant before the Hon'ble Supreme Court of India is too well known and various orders have been passed from time to time by the Hon'ble Supreme Court in this regard. The appellant reserves its liberty to refer and to produce the orders at appropriate stage of this proceeding.

5. It is submitted that the entire factual and legal gamut of this petition is similar to the case in *Chandrashekaraiiah v. Janekere C. Krishna*, (2013) 3 SCC 117. The petitioner respectfully adopts the legal position enunciated in the said case.

6. It is submitted that the institution of Lokayukta was set up in the State of Karnataka under Karnataka Lokayukta Act, 1984 for improving the standard of public administration by looking into complaints against administrative actions including cases of corruption, favouritism and official indiscipline in administrative machinery. Prior to this, the President of India vide Notification No. 40/3/65-AR(P) dated 5:1:1966 appointed the Administrative Reforms Commission for addressing “Problems of Redress of Citizens’ Grievances” inter alia with the object for ensuring the highest standards of efficiency and integrity in the public services, for making public administration a fit instrument for carrying out the social and economic policies of the Government and achieving social and economic goals of development as also one responsive to people. The Commission was asked to examine the various issues including the problems of redress of citizens’ grievances. One of the terms of reference specifically assigned to the Commission required it to deal with the problems of redress of citizens’ grievances, namely:

*(1) the adequacy of existing arrangements for redress of grievances; and*

*(2) the need for introduction of any new machinery for special institution for redress of grievances.*

7. The Commission suggested that there should be one authority dealing with complaints against the administrative acts of Ministers or Secretaries to Government at the Centre and in the States and another authority in each State and at the Centre for dealing with complaints

against administrative acts of other officials and all these authorities should be independent of the executive, the legislative and the judiciary. The commission in its report has stated as follows;

*“21. We have carefully considered the political aspect mentioned above and while we recognise that there is some force in it, we feel that the Prime Minister’s hands would be strengthened rather than weakened by the institution. In the first place, the recommendations of such an authority will save him from the unpleasant duty of investigation against his own colleagues. Secondly, it will be possible for him to deal with the matter without the glare of publicity which often vitiates the atmosphere and affects the judgment of the general public. Thirdly, it would enable him to avoid internal pressures which often help to shield the delinquent. What we have said about the Prime Minister applies mutatis mutandis to the Chief Minister.”*

*23. Public opinion has been agitated for a long time over the prevalence of corruption in the administration and it is likely that cases coming up before the independent authorities mentioned above might involve allegations or actual evidence of corrupt motive and favouritism. We think that this institution should deal with such cases as well, but where the cases are such as might involve criminal charge or misconduct cognizable by a court, the case should be brought to the notice of the Prime Minister or the Chief Minister, as the case may be. The latter would then set the machinery of law in motion after following appropriate procedures and observing necessary formalities. The present system of Vigilance Commissions wherever operative will then become redundant and would have to be abolished on the setting up of the institution.*

*24. We suggest that the authority dealing with complaints against Ministers and Secretaries to Government may be designated ‘Lokpal’ and the other authorities at the Centre and in the States empowered to deal with complaints against other officials may be designated ‘Lokayukta’. A word may be said about our decision to include Secretaries’ actions along with those of Ministers in the jurisdiction of the Lokpal. We have taken this decision because we feel that at the level at which Ministers and Secretaries function, it might often be difficult to decide where the role of one functionary ends and that of the other begins. The line of demarcation between the responsibilities and influence of the Minister and Secretary is*

*thin; in any case much depends on their personal equation and personality and it is most likely that in many a case the determination of responsibilities of both of them would be involved.*

*25. The following would be the main features of the institutions of Lokpal and Lokayukta:*

- (a) They should be demonstrably independent and impartial.*
- (b) Their investigations and proceedings should be conducted in private and should be informal in character.*
- (c) Their appointment should, as far as possible, be non-political.*
- (d) Their status should compare with the highest judicial functionaries in the country.*
- (e) They should deal with matters in the discretionary field involving acts of injustice, corruption or favouritism.*
- (f) Their proceedings should not be subject to judicial interference and they should have the maximum latitude and powers in obtaining information relevant to their duties.*
- (g) They should not look forward to any benefit or pecuniary advantage from the executive Government.*

Bearing in mind these essential features of the institutions, the Commission recommend that the Lokpal be appointed at the Centre and Lokayukta at the State level.

*36. So far as the Lokayukta is concerned, we envisage that he would be concerned with problems similar to those which would face the Lokpal in respect of Ministers and Secretaries though, in respect of action taken at subordinate levels of official hierarchy, he would in many cases have to refer complainants to competent higher levels. We, therefore, consider that his powers, functions and procedures may be prescribed mutatis mutandis with those which we have laid down for the Lokpal. His status, position, emoluments, etc. should, however, be analogous to those of a Chief Justice of a High Court and he should be entitled to have free access to the Secretary to the Government concerned or to the Head of the Department with whom he will mostly have to deal to secure justice for a deserving citizen. Where he is dissatisfied with the action taken by the Department concerned, he should be in a*

*position to seek a quick corrective action from the Minister or the Secretary concerned, failing which he should be able to draw the personal attention of the Prime Minister or the Chief Minister as the case may be. It does not seem necessary for us to spell out here in more detail the functions and powers of the Lokayukta and the procedures to be followed by him.*

*37. We have carefully considered whether the institution of Lokpal will require any constitutional amendment and whether it is possible for the office of the Lokpal to be set up by Central Legislation so as to cover both the Central and State functionaries concerned. We agree that for the Lokpal to be fully effective and for him to acquire power, without conflict with other functionaries under the Constitution, it would be necessary to give a constitutional status to his office, his powers, functions, etc. We feel, however, that it is not necessary for Government to wait for this to materialise before setting up the office. The Lokpal, we are confident, would be able to function in a large number of cases without the definition of his position under the Constitution. The constitutional amendment and any consequential modification of the relevant statute can follow. In the meantime, the Government can ensure that the Lokpal or Lokayukta is appointed and takes preparatory action to set up his office, to lay down his procedures, etc. and commence his work to such extent as he can without the constitutional provisions. We are confident that the necessary support will be forthcoming from Parliament.*

*38. We should like to emphasise the fact that we attach the highest importance to the implementation, at an early date, of the recommendations contained in this our Interim Report. That we are not alone in recognising the urgency of such a measure is clear from the British example we have quoted above. We have no doubt that the working of the institution of Lokpal or Lokayukta that we have suggested for India will be watched with keen expectation and interest by other countries. We hope that this aspect would also be fully borne in mind by the Government in considering the urgency and importance of our recommendation. Though its timing is very close to the next Election, we need hardly to assure the Government that this has had nothing to do with the necessity of making this Interim Report. We have felt the need of such a recommendation on merits alone and are convinced that we are making it not a day too soon.”*

8. Based on the above report, the following Bill was presented before the Karnataka Legislature which reads as follows:

*“The Administrative Reforms Commission had recommended the setting up of the institution of Lokayukta for the purpose of appointment of Lokayukta at the State’s level, to improve the standards of public administration, by looking into complaints against administrative actions, including cases of corruption, favouritism and official indiscipline in administrative machinery.*

*One of the election promises in the election manifesto of the Janatha Party was the setting up of the institution of the Lokayukta.*

*The Bill provides for the appointment of a Lokayukta and one or more Upa-Lokayuktas to investigate and report on allegations or grievances relating to the conduct of public servants.*

*The public servants who are covered by the Act include—*

- (1) Chief Minister;*
- (2) all other Ministers and Members of the State Legislature;*
- (3) all officers of the State Government;*
- (4) Chairman, Vice-Chairman of local authorities, statutory bodies or corporations established by or under any law of the State Legislature, including cooperative societies;*
- (5) persons in the service of local authorities, corporations owned or controlled by the State Government, a company in which not less than fifty-one per cent of the shares are held by the State Government, societies registered under the Societies Registration Act, cooperative societies and universities established by or under any law of the legislature.*

*Where, after investigation into a complaint, the Lokayukta considers that the allegation against a public servant is prima facie true and makes a declaration that the post held by him, and the declaration is accepted by the competent authority, the public servant concerned, if he is a Chief Minister or any other Minister or Member of the State Legislature shall resign his office and if he is any other non-official shall be deemed to have vacated his office, and, if an official, shall be deemed to have been kept under*

*suspension, with effect from the date of the acceptance of the declaration.*

*If after investigation, the Lokayukta is satisfied that the public servant has committed any criminal offence, he may initiate prosecution without reference to any other authority. Any prior sanction required under any law for such prosecution shall be deemed to have been granted.*

*The Vigilance Commission is abolished. But all inquiries and investigations and other disciplinary proceedings pending before the Vigilance Commission will get transferred to the Lokayukta.”*

**9.** The Bill became an Act with some modifications as the Karnataka Lokayukta Act, 1984. Section 7 deals with matters which may be investigated by the Lokayukta and an Upa-Lokayukta. Section 8 speaks about matters not subject to investigation. Section 9 provides for provisions relating to complaints and investigations.

**10.** Section 10 empowers the Lokayukta or Upa-Lokayukta to exercise certain powers in relation to search and seizure. It says that the provisions of the Code of Criminal Procedure relating to search and seizure would apply only for the limited purpose of investigation carried out by the incumbent, in consequence of information in his possession, while investigating into any grievance, allegation against any administrative action. Section 11 deals with the producing, recording, etc. of evidence for the purpose of investigation under the Act. The Act has also been enacted to make provision for making enquiries by the Lokayukta and Upa-Lokayukta into the administrative action relating to matters specified in List II or List III of the Seventh Schedule to the Constitution, taken by or on behalf of the Government of Karnataka or certain public authorities in the State of Karnataka, including any omission or commission in connection with or arising out of such action, etc.

**11.** The Lokayukta or Upa-Lokayukta under the Act are established to investigate and report on allegations or grievances relating to the conduct of public servants which includes the Chief Minister; all other Ministers and Members of the State Legislature; all officers of the State Government; Chairman, Vice-Chairman of local authorities, corporations, owned or controlled by the State Government, a company in which not less than fifty-one per cent of the shares are held by the State Government, societies registered under the Societies Registration Act, cooperative societies and universities established by or under any law of the legislature.

**12.** Section 3 of the Act deals with Appointment of Lokayukta and Upa-Lokayukta and the same reads as hereunder:

*(1) For the purpose of conducting investigations and enquiries in accordance with the provisions of this Act, the Governor shall appoint a person to be known as the Lokayukta and one or more persons to be known as the Upa-Lokayukta or Upa-Lokayuktas.*

*(2)(a) A person to be appointed as the Lokayukta shall be a person who has held the office of a Judge of the Supreme Court or that of the Chief Justice of a High Court and shall be appointed on the advice tendered by the Chief Minister in consultation with the Chief Justice of the High Court of Karnataka, the Chairman, Karnataka Legislative Council, the Speaker, Karnataka Legislative Assembly, the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Assembly.*

*(b) A person to be appointed as an Upa-Lokayukta shall be a person who has held the office of a Judge of a High Court and shall be appointed on the advice tendered by the Chief Minister in consultation with the Chief Justice of the High Court of Karnataka, the Chairman, Karnataka Legislative Council, the Speaker, Karnataka Legislative Assembly, the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Assembly.*

*(3) A person appointed as the Lokayukta or an Upa-Lokayukta shall, before entering upon his office, make and subscribe, before the Governor, or some person appointed in that behalf of him, an oath or affirmation in the form set out for the purpose in the First Schedule.*

**13.** The purpose of appointment of the Lokayukta or Upa-Lokayuktas is clearly spelt out in Section 3(1) of the Act which indicates that it is for the purpose of conducting investigation and enquiries in accordance with the provisions of the Act. The procedure to conduct investigation has been elaborately dealt with in the Act. The scope of enquiry is however limited, compared to the investigation, that is, only to the ascertainment of the truth or falsehood of the allegations. The power has been entrusted by the Act on the Governor to appoint a person to be known as Lokayukta and one or more persons to be known as Upa-Lokayukta and Upa-Lokayuktas. The person to be appointed as Lokayukta shall be a person who has held the office of a Judge of the Supreme Court of India or that of the Chief Justice of the High Court. The Governor, as per Section 3(2)(a), is empowered to appoint Lokayukta on the advice tendered by the Chief Minister, in consultation with the Chief Justice of the High Court of Karnataka, the Chairman, Karnataka Legislative Council, the Speaker, Karnataka Legislative Assembly, the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Assembly. It is, therefore, clear that all the above five dignitaries have to be consulted before tendering advice by the Chief Minister to the Governor of the State. Section 3(2)(b) of the Act stipulates that, so far as the Upa-Lokayukta is concerned, he shall be a person who has held the office of a Judge of the High Court and shall be appointed on the advice tendered by the Chief Minister. The Chief Minister has to consult the five dignitaries, the Chief Justice of the High Court of Karnataka, the Chairman, Karnataka Legislative

Council, the Speaker, Karnataka Legislative Assembly, the Leader of the Opposition in the Legislative Council and the Leader of Opposition in the Karnataka Legislative Assembly. Therefore, for the purpose of appointment of the Lokayukta or Upa-Lokayukta all the five consultees are common. The appointment has to be made by the Governor on the advice tendered by the Chief Minister in consultation with those five dignitaries.

**14.** The provisions clearly indicate that the Chief Minister is legally obliged to consult the Chief Justice of the High Court and other four consultees, which is a mandatory requirement. The consultation must be meaningful and effective and mere eliciting the views or calling for recommendations would not suffice. The consultees can suggest various names from the source stipulated in the statute and those names have to be discussed either in a meeting to be convened by the Chief Minister of the State for that purpose or by way of circulation. The Chief Minister, if proposes to suggest or advise any name from the source earmarked in the statute that must also be made available to the consultees so that they can also express their views on the name or names suggested by the Chief Minister. The consultees can express their honest and free opinion about the names suggested by the other consultees including the Chief Justice or the Chief Minister. After due deliberations and making meaningful consultation, the Chief Minister of the State is free to advise a name which has come up for consideration among the consultees to the Governor of the State. The advice tendered by the Chief Minister will have primacy and not that of the consultees including the Chief Justice of the High Court.

**15.** The fact remains that there must be consultation on the person who is sought to be appointed as Upa-Lokayukta. Simply put, the Government cannot consult the Chief Justice on one candidate and on getting the latter's views appoint someone else. Such exercise amounts to fraud on power.

**16.** It is submitted that the office of Upa-Lokayukta fell vacant on the retirement of Shri. Subhash B Adi, former Judge High Court of Karnataka on 1<sup>st</sup> March 2018 and the then Chief Minister initiated steps for filling up that vacancy. Following that, the Chief Minister on 24 July 2018 addressed a letter to the Chief Justice of the High Court of Karnataka, requesting his lordship to suggest a panel of eligible persons for appointment as Upa-Lokayukta. A true copy of the said letter of the then Chief Minister dated 24:7:2018 is produced herewith marked *Annexure-A* for the kind perusal of this Hon'ble Court.

**17.** The then Chief Justice of Karnataka suggested the name of Justice A.N. Venugopalagouda, former Judge, High Court of Karnataka. A true copy of the said recommendation dated 14<sup>th</sup> September 2018 along with its enclosure is produced herewith and marked *Annexure-B*. That on 20 June 2019 the Chief Minister of Karnataka addressed a letter to the present Chief Justice of Karnataka requesting to name an eligible person for being considered to the office of Karnataka Upa Lokayukta. A true copy of the said letter is produced herewith marked *Annexure-C*. In the said letter, the Chief Minister brings to the notice of the present Chief Justice the factum of recommendation made by the earlier Chief Justice recommending the name of Shri. A.N. Venugopala Gowda, former Judge, High Court of Karnataka, for the office of Upa Lokayukta.

18. Under these circumstances, the present Chief Justice of Karnataka addressed a letter to the Chief Minister reiterating the recommendation made by his lordship's predecessor i.e. recommending the name of Shri. A.N. Venugopala Gowda, former Judge, High Court of Karnataka. A true copy of the said letter dated 22<sup>nd</sup> June 2019 is produced herewith marked *Annexure-D*.

19. When the things stood thus, the Chief Minister addressed a letter to the Chief Justice of Karnataka on 12<sup>th</sup> November 2019 acknowledging the recommendation of Shri. A.N. Venugopala Gowda, former Judge, High Court of Karnataka, and informing the Chief Justice that "the process of consultation of all the other four authorities i.e, the Chairman of Karnataka Legislative Council, the Speaker of Karnataka Legislative Assembly, Leader of the Opposition in Karnataka Legislative Council and the Leader of the Opposition in Karnataka Legislative Assembly have recommended" the 4<sup>th</sup> respondent herein to be appointed as Upa-Lokayukta. The letter also says that "the recommendation of Hon'ble Chief Justice regarding Hon'ble Sri. Justice A.N. Venugopala Gowda has been brought to the notice of the above four authorities". A true copy of the said letter of the Chief Minister is produced herewith marked *Annexure-E*.

20. The above developments after the letter of the Hon'ble Chief Justice dated 22<sup>nd</sup> June 2019 till the letter of the Chief Minister dated 12<sup>th</sup> November 2019 smacks of utter disregard for the rule of law and sheer fraud on power. When the name of Shri. A.N. Venugopala Gowda, Judge (Rtd) was replaced by the 4<sup>th</sup> respondent, there was no consultation whatsoever let along simultaneous or individual consultation. As a matter of fact, the State Government demonstrates its audacity in saying that the Chief Justice recommended one person and that the same was brought to the notice of the other consultees

and that all four consultees have chosen the 4<sup>th</sup> respondent. The letter of the Chief Minister concludes by saying that the ‘above facts are placed before you for your kind consideration’. The letter makes it clear that the file pertaining to the 4<sup>th</sup> respondent was not placed before the Chief Justice for consolation let alone meaningful consultation as declared by the Hon'ble Supreme Court. Basically the consultation was only regarding Shri. A.N. Venugopala Gowda, Judge (Rtd) and not that of the 4<sup>th</sup> respondent herein.

**21.** It is submitted that the letter of the Chief Minister does not even contain the details of the 4<sup>th</sup> respondent, if the letter were to be construed as consultation. There was no consultation at all. The letter was an intimation that the ‘other four consultees’ have finalized the name of the 4<sup>th</sup> respondent and the same was being brought to the notice of the Chief Justice.

**22.** On receipt of the letter dated 12<sup>th</sup> November 2019, the Hon'ble Chief Justice addressed letter to the Chief Minister on 14<sup>th</sup> November 2019 referring to earlier recommendations and stating that “there was no material” placed before the Chief Justice by the State Government “warranting change of the recommendation earlier made” by the Chief Justice and his predecessor and that the Chief Justice maintains the recommendation. The Chief Justice categorically expresses that he is unable to concur with the recommendation made known to him in the letter of the Chief Minister. A true copy of the letter of the Chief Justice to the Chief Minister dated 14 November 2019 is produced herewith marked *Annexure-F*

**23.** To compound the utter disregard for Rule of Law and in clear perpetuation of fraud on power, the Governor of Karnataka issued an order on However, in clear violation of the provisions of the Act and

the law declared by this Hon'ble Court and the Hon'ble Supreme Court, the Governor of Karnataka, the Governor of Karnataka has issued an order appointing the 4<sup>th</sup> respondent herein as Upa-Lokayuktha by making factually incorrect statement that the Chief Justice of Karnataka was consulted regarding the appointment. This, in the most respectful submission of the petitioner, is the ultimate disgrace done to one constitutional functionary by another. The order issued by the Governor of Karnataka on 20<sup>th</sup> November 2019 is produced herewith marked ***Annexure-G***.

**24.** On coming to know about the illegality in the matter of appointment of 4<sup>th</sup> respondent, the petitioner through its office bearer Dr. K. Shivaram applied and obtained relevant documents from the office of the State Public Information officer and Joint Registrar, High Court of Karnataka. True copies of the communications in this regard dated 30 November 2019 are produced herewith marked ***Annexure-H*** and ***Annexure-J*** respectively.

**25.** The petitioner who believes that institutional integrity and constitutional morality should prevail over political morality and extraneous considerations in the matter of appointment to highest offices which are meant to safeguard the citizenry against maladministration and corruption is aggrieved by the appointment of 4<sup>th</sup> respondent in clear violation of the Act and the law declared. In the absence of alternative, efficacious remedy left open for the redressal of the grievances, the petitioner has invoked the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India on the following grounds.

**GROUNDS**

**26.** It is most respectfully submitted that the appointment of the 4<sup>th</sup> respondent, without consultation with the Chief Justice specifically on the appointment of the 4<sup>th</sup> respondent, borrowing the language used in *Chandrashekaraiiah v. Janekere C. Krishna, (2013) 3 SCC 117* is void ab initio. It is submitted that the Governor, as per Section 3(2)(a), is empowered to appoint Lokayukta on the advice tendered by the Chief Minister, in consultation with the Chief Justice of the High Court of Karnataka, the Chairman, Karnataka Legislative Council, the Speaker, Karnataka Legislative Assembly, the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Assembly. It is, therefore, clear that all the above five dignitaries have to be consulted before tendering advice by the Chief Minister to the Governor of the State. The purpose of appointment of the Lokayukta or Upa-Lokayukta all the five consultees are common. The appointment has to be made by the Governor on the advice tendered by the Chief Minister in consultation with those five dignitaries.

**27.** The Chief Minister, in the submission of the petitioner, has committed an error in not consulting the Chief Justice of the High Court in the matter of appointment of the 4<sup>th</sup> respondent as Upa-Lokayukta. The records indicate that there was no consultation, let alone meaningful and effective consultation or discussion of the name suggested among the consultees before advising the Governor for appointment to the post of Upa-Lokayukta. The appointment of the 4<sup>th</sup> respondent as Upa-Lokayukta, therefore, is in violation of Section 3(2)(b) of the Act since the Chief Justice of the High Court was not consulted nor was the name deliberated upon before advising or appointing him as Upa-Lokayukta. Consequently, the appointment of

the 4<sup>th</sup> respondent as Upa-Lokayukta cannot stand in the eye of the law and he has no authority to continue or hold the post of Upa-Lokayukta of the State. His appointment is hence liable to be quashed.

28. The petitioner is deeply hurt that a constitutional functionary such as the Governor of Karnataka had to make a factually incorrect and rather false (*if the petitioner is permitted to say so*) statement in the appointment order that the Hon'ble Chief Justice of Karnataka was consulted in the matter of appointment of 4<sup>th</sup> respondent as Upa-Lokayukta. This, in the most respectful submission of the petitioner, is a disgrace. A constitutional functionary making a false representation in the orders is the ultimate debacle of the Governmental machinery and the same shall be condemned/dealt with utmost sternness.

29. The petitioner craves leave of this Hon'ble Court to urge other legal grounds, including institutional integrity vis-à-vis 4<sup>th</sup> respondent, at the time of arguments before this Hon'ble Court.

30. The petitioner has not filed any other writ petition before this Hon'ble Court or initiated any other suit or proceeding before any court or tribunal on the same cause of action.

31. **GROUND IN SUPPORT OF INTERIM PRAYER:** Having regard to the facts and circumstances of the case and the seriousness involved, the petitioner prays that it is just and necessary that this Hon'ble Court be pleased to order respondents 2 and 3 to secure and produce all the documents pertaining to the appointment of 4<sup>th</sup> respondent as Karnataka Upa-Lokayukta before this Hon'ble Court. Hence the prayer for interim orders.

**P R A Y E R**

The petitioner prays for issuance of appropriate writ or order;

- (i) declaring that the respondent 4 has no authority to hold & continue to hold the public office of the Karnataka Upa-Lokayukta, under the Karnataka Lokayukta Act, 1984;
- (ii) quashing the order bearing no. DPAR 168 SLU 2017 dated 20:11:2019 passed by the Governor of Karnataka, appointing 4<sup>th</sup> respondent as Karnataka Upa-Lokayukta, copy produced and marked as Annexure-G - AND
- (iii) For such other order or orders as this Hon'ble Court deems fit to grant under the circumstances of the case in the interest of justice and equity.

**INTERIM PRAYER**

Pending disposal of the present writ petition, the petitioner prays that this Hon'ble Court be pleased to direct 2 and 3 to secure and produce all the documents/correspondences/files and notes pertaining to the appointment of 4<sup>th</sup> respondent as Karnataka Upa-Lokayukta, before this Hon'ble Court, in the interest of justice and equity.

**ADVOCATE FOR PETITIONER**

**ADDRESS FOR SERVICE**