

ITEM NO.5 Court No.1 (Video Conferencing) SECTION PIL-W

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

Writ Petition(s)(Civil) No(s). 748/2020

THE STATE OF NAGALAND

Petitioner(s)

VERSUS

CHAIRPERSON & ORS.

Respondent(s)

(FOR ADMISSION)

Date : 21-08-2020 This petition was called on for hearing today.
CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s) Mr. K N Balgopal, Advocate-General
Mr./Ms. Nitya Nambiar, Adv.
Mr. Ishaan Sharma, Adv.
Mr. A P Mukund, Adv.
Mr./Ms. Priyamvada Mishra, Adv.
Mr. Shrey Patnaik, Adv.
Mr. Aditya Verma, AOR

For Respondent(s)

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

Issue notice returnable two weeks.

On an oral prayer made by Mr. K N Balgopal, learned Advocate General appearing for the petitioner - State, the name of respondent no.3 is deleted from the array of parties at the risk of the petitioner.

(SANJAY KUMAR-II)
ASTT. REGISTRAR-cum-PS

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR

SYNOPSIS

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1. That the present writ petition is being filed under Article 32 read with Article 142 praying that this Hon'ble Court may be pleased to:
 - a. issue a writ, order, or direction in the nature of *mandamus* or otherwise to Respondent No 1 to assign / transfer all pending cases before him to the Upa-Lokayukta(s);
 - b. issue a writ, order, or direction in the nature of prohibition or otherwise to Respondent No 1 to cease exercise of all his powers and functions as Nagaland Lokayukta / Chairperson, Lokayukta for the State of Nagaland (as per the Nagaland Lokayukta Act, 2017).
2. That the Petitioner was granted liberty to file this writ petition by this Hon'ble Court on 13 Dec 2019 in WP (C) No 684 of 2016 as follows:

"The State of Nagaland is granted liberty to file a separate petition pertaining to the functioning of the Lokayukta in Nagaland."
3. That it is imperative that the prayers sought in the writ petition be granted by this Hon'ble Court in exercise of its jurisdiction under Article 32 read with Article 142 in order to protect the institutional autonomy and propriety of the office of Lokayukta which, in the constitutional and statutory scheme, is necessary to ensure the preservation of

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the legitimate rights and expectations under Article 14, *inter alia*, of the residents of Nagaland against arbitrary / unreasonable action of statutorily appointed office bearers (including Respondent No 1).

4. That April 2019 onwards, there have been a number of incidents where the conduct of Respondent No 1 has fallen far short of the standard expected of someone in his position. Numerous instances of whimsical and capricious behaviour as well as unjustified and arbitrary demands have made it untenable for him to continue to exercise the powers and functions of the Lokayukta of the State of Nagaland. These incidents are reflected in the documentary record in some instances and have been reliably communicated by state government officials in others. For the purposes of the present writ petition, the following facts pertaining to the functioning of Respondent No 1 are pertinent.

Continuance as arbitrator

5. That on 18 Apr 2019, Respondent No 1 sent a request in writing to Tali Temjen Toy, Chief Secretary, Government of Nagaland ("**Chief Secretary**") for relaxation of Section 4(2)(c) of the Nagaland Lokayukta Act, 2017, (hereinafter "**Act**") in terms of Section 32A of the Nagaland Lokayukta (Amendment) Bill, 2019 to permit him to continue with a prior engagement as arbitrator for a matter titled *Synergy*

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Ispat Pvt Ltd v Mrs Barbara Elizabeth Simoes. There is a clear prohibition in law for the Lokayukta or Upa-Lokayukta to hold any other office under Section 4 of the Act.

6. That although Respondent No 1 knew that such 'relaxation' was not permissible under the present Act, and that his continuance as an arbitrator would require an amendment to the Act, Respondent No 1 stated, in his letter, that grant of such permission is commonplace where such engagement has been accepted prior to appointment to a government office.

Functioning from Delhi "ONLINE"

7. On 16 May 2019, Respondent No 1 addressed a letter to the Chief Secretary requesting the Petitioner to "allow" him to function from Delhi / seeking permission "to function from Delhi ONLINE". Apart from perfunctory statements about:
- a) lack of proper accommodation;
 - b) having to travel a long distance from his place of residence to the Lokayukta office;
 - c) absence of a good law library; and
 - d) there being only 'meagre routine works'.
8. That Respondent No 1 had been personally informed of the inability of the Petitioner to accede to his request. Respondent No 1, being a former Chief Justice of a High Court, was well-aware of the fact that a legislative amendment to the Act was necessary and that approval of

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the Chief Secretary, in the absence of such an amendment, would not suffice to enable him to function from Delhi. As a result of this order dated 24 Sep 2019, the letter dated 6 Jun 2019 communicating the purported approval on behalf of the Chief Secretary, without his direct knowledge, came to light.

9. That on 8 Oct 2019, Deputy Secretary, Govt of Nagaland addressed a letter to Respondent No 1 stating that the letter dated 6 Jun 2019 stood withdrawn with immediate effect as it did not have the approval of the Chief Secretary. It further stated as follows:

"It is also proposed to hold an inquiry as to how this misleading letter was issued from this Department."

10. Respondent No 1 did not respond to this communication but began to show his ire by indiscriminately issuing various notices to honest officials. Thereafter, he devised an ingenious method to allow himself to work from Delhi by issuing self-serving regulations.

Deviation from Security Protocol

11. That on 26 Sep 2019, IGPD addressed a letter to the Chief Secretary stating that the security of Lokayukta has been graded as "Y Plus" and that the matter of exemption from frisking at all airports may be taken up with the Bureau of Civil Aviation Security, Government of India. This letter was accompanied by a detailed itinerary of travel for Respondent

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No 1, which reflected that he was travelling out of Kohima two to three times a month.

12. That Respondent No 1 demanded that the Commissioner of Police be present at the Dimapur airport at the time of his arrival and departure from the airport each time. The Respondent had made further unreasonable requests regarding deployment of army personnel for his protection. However, he had been informed that such protection was not available even to the Chief Justice of India and therefore, could not be extended to him.

Allotment of Chief Minister's bungalow

13. That after fulfilment of certain excessive demands of Respondent No 1 at the expense of the state exchequer, he made another unjustified request for allotment of the former residence-cum-office of the Chief Minister. On 9 Dec 2019, Respondent No 1 directed the Nagaland Lokayukta Secretary to address yet another communication to the Chief Secretary stating that there is *"no proper accommodation with required infrastructure and amenities for Residential Office and Court Room and further he has to travel on hilly roads a long distance everyday to reach office, it would be ideal for the State government to consider the request for allotment of Chief Minister's old Bungalow as designated residence for Lokayukta"*, as the Chief Minister had moved out and may not need the old bungalow.

Other incidents

14. That, the Upa-Lokayukta had addressed a letter (marked as Confidential) to the Additional Chief Secretary to the Chief Minister highlighting the aforesaid order dated 22 Jul 2019 stating that Respondent No 1 has violated the provisions of Section 11 of the Act. He further stated that the power of the Lokayukta to make regulations under Section 33 of the Act has been bestowed with the objective of carrying out the purpose(s) of the Act, such as fixation of normal working hours, holding of sittings of the Lokayukta at places other than the place of ordinary sittings, procedure for conduct of proceedings, prescribed forms in which complaints must be made, and such forms and notices as may be necessary for carrying out inquiry and investigation, and matters of appointment. However, the Lokayukta is not entitled to override any provisions of the Act by way of regulation(s) made pursuant to Section 33 of the Act. Therefore, the Upa-Lokayukta urged the State Government to intervene in the matter at the earliest.
15. That in addition to the above, there have been numerous instances where Respondent No 1 has conducted himself in a manner that appears to deliberately demean the socio-cultural ethos of, and humiliate the local populace and institutions.

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16. That Respondent No 1 had, on one occasion, directed the IGPD to purchase two pairs of shoes from Dimapur, the commercial capital of Nagaland. The IGPD was required to 'Whatsapp' pictures of shoes for the approval of Respondent No 1, following which, he was required to bring the shoes so approved to Kohima, where Respondent No 1 resided. Respondent No 1 had been repeatedly advised not to mistreat members of the tribal community as his actions could lead to consequences seriously embarrassing for himself and the institution of Lokayukta, particularly in light of various legislations to protect such communities.
 17. That Respondent No 1 had also asked for his photograph to be displayed next to the photograph of the Governor, and Chief Minister of the State of Nagaland on official website of the State Government.
 18. That Respondent No 1 has also made several intemperate observations against officials of the Petitioner while passing orders under the Act. These observations have also been made public, contrary to Section 19 of the Act.
 19. That the doctrine of institutional autonomy and institutional integrity has been well-recognized by this Hon'ble Court in a number of cases, including *Vineet Narain and ors v Union of India and ors*, (1998) 1 SCC 226, which held, *inter alia*:

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Para 55: "It is trite that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law."

20. That this Hon'ble Court cited the celebrated 'Nolan Principles' (para 54, Vineet Narain's case) for guidance on the standard of conduct expected of those in public office:

"1. Selflessness

Holders of public office should act solely in terms of the public interest.

2. Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

3. Objectivity

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Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

4. Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

5. Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

6. Honesty

Holders of public office should be truthful.

7. Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs."

21. That in the present case, Respondent No 1 has failed to abide by these high standards which are not only expected of him from a moral and ethical standpoint but are also binding legally in view of the doctrine of constitutionalism developed by this Hon'ble Court. Each instance on its own need not amount to gross indiscretion; however, the facts above clearly demonstrate a pattern of behaviour where unreasonable and unjustified demands are made by Respondent No 1 whenever his demands are not met.

22. That even otherwise, the other instances which reflect demands for preferential or special treatment in various

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circumstances are contrary to the spirit of equality and the rule of law. Such arbitrary and capricious actions deny the right to a fair, just, and accountable Lokayukta to the residents of Nagaland in contravention of Article 14 of the Constitution of India. It is noteworthy that the Constitution accords special priority to the rights of members of tribal communities, and repeated humiliation of such communities, including their officers, has led to an extraordinary situation which warrants interference by this Hon'ble Court.

23. Hence, this writ petition.

LIST OF DATES L

Date	Description
13 Dec 2019	<p>The Petitioner was granted liberty to file this writ petition by this Hon'ble Court on 13 Dec 2019 in WP (C) No 684 of 2016 as follows:</p> <p><i>"The State of Nagaland is granted liberty to file a separate petition pertaining to the functioning of the Lokayukta in Nagaland."</i></p> <p>A true copy of the order of this Hon'ble Court granting liberty to the Petitioner dated 13 Dec 2019 is at Ann P/1 (pg 53-57).</p>
11 Feb 2019	<p>This Hon'ble Court had passed the following order in WP (C) No 684 of 2016 with regard to the appointment of Respondent No 1 / Nagaland Lokayukta:</p> <p><i>"We would require the State of Nagaland to file an affidavit before the Court indicating the precise work and tasks undertaken by the newly appointed Lokayukta, specifically, the cases dealt with by him and the orders passed.</i></p> <p><i>The aforesaid report of the work undertaken will be filed by the end of April, 2019 when this matter will be considered along with the cases of Odisha, Mizoram and Manipur."</i></p>

	<p>A true copy of the order of this Hon'ble Court in WP (C) No 684 of 2016 dated 11 Feb 2019 is at Ann P/2 (pg 58-65)).</p>
13 Mar 2019	<p>Respondent No 1 was formally appointed as the Nagaland Lokayukta / Chairperson, Lokayukta for the State of Nagaland (hereinafter referred to as "Nagaland Lokayukta" / "Respondent No 1").</p> <p>A true copy of the letter from the Petitioner to Respondent No 1 dated 13 Mar 2019 is at Ann P/3 (pg 66)).</p>
25 Apr 2019	<p>The Petitioner filed an affidavit as per the aforesaid order dated 11 Feb 2019 stating, <i>inter alia</i>:</p> <ol style="list-style-type: none"> a. Respondent No 1 had proposed that the erstwhile State Vigilance Commission be merged with the office of Lokayukta; b. Investigating officers had been directed to prepare status reports of pending cases of preliminary enquiry; c. Fresh complaints had been directed to be refiled in the format prescribed under Section 33 of the Act; and

	<p>d. A conference had been held on 15 Apr 2019 for awareness about the new office of the Nagaland Lokayukta.</p> <p>A true copy of the affidavit dated 25 Apr 2019 filed in WP (C) No 684 of 2016 is at Ann P/4 (pg 67-89).</p>
26 Apr 2019	<p>With respect to the aforesaid affidavit / status report, this Hon'ble Court only recorded the following in WP (C) No 684 of 2016:</p> <p><i>"Insofar as the State of Nagaland is concerned, the status report filed with regard to the work done has been perused."</i></p> <p>A true copy of the order of this Hon'ble Court in WP (C) No 684 of 2016 dated 26 April 2019 is at Ann P/5 (pg 90-93).</p>
18 Apr 2019	<p>Respondent No 1 sent a request in writing to Tali Temjen Toy, Chief Secretary, Government of Nagaland ("Chief Secretary") for relaxation of Section 4(2)(c) of the Nagaland Lokayukta Act, 2017 (hereinafter "Act") in terms of Section 32A of the Nagaland Lokayukta (Amendment) Bill, 2019 to permit him to continue with a prior engagement as arbitrator for a matter titled <i>Synergy Ispat Pvt Ltd v Mrs Barbara</i></p>

	<p><i>Elizabeth Simoes.</i></p> <p>A true copy of the letter from Respondent No 1 to the Petitioner dated 18 Apr 2019 is at Ann P/6 (pg 94).</p>
25 Jul 2019	<p>Respondent No 1 directed the Nagaland Lokayukta Secretary to withdraw the letter from Respondent No 1 to the Petitioner dated 18 Apr 2019 in view of non-response from the competent authority for three months. This letter was marked to the Additional Chief Secretary, Principal Secretary, and Law Secretary.</p> <p>A true copy of the letter from Respondent No 1 to the Petitioner dated 25 Jul 2019 is at Ann P/7 (pg 95).</p>
16 May 2019	<p>Respondent No 1 sent written communications reiterating the said request. On 16 May 2019, Respondent No 1 addressed a letter to the Chief Secretary requesting the Petitioner to "allow" him to function from Delhi / seeking permission "<i>to function from Delhi ONLINE</i>".</p> <p>A true copy of the letter from Respondent No 1 to the Petitioner dated 16 May 2019 is at Ann P/8 (pg 96-97).</p>

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<p>29 May 2019</p>	<p>Principal Secretary (Abhishek Singh), recorded the following notings on the aforesaid file:</p> <ul style="list-style-type: none">i. "There should be no objection on Lokayukta operating from Kohima or Delhi"; andii. "Threat Perception Committee to consider the matter of security concerns." <p>These notings were made without the direct knowledge or consent of the Chief Secretary.</p> <p>A true typed copy (along with its true copy) of the file notings dated 29 May 2019 to 3 Jun 2019 is at Ann P/9 (pg 98-104).</p>
<p>6 Jun 2019</p>	<p>The Under Secretary, Personnel and Administrative Reforms Department, Government of Nagaland addressed a letter to the Respondent No 1 (incorrectly) stating that his request "to function from Delhi ONLINE" "has the approval of Chief Secretary". It is noteworthy, that the File No AR-3/GEN-362/2019 does not contain notings recording the explicit approval of Chief Secretary on this matter. This letter</p>

	<p>was issued only to the Lokayukta and even copies of the said communication was not endorsed to any other department.</p> <p>A true copy of the letter from the Petitioner to Respondent No 1 dated 6 Jun 2019 is at Ann P/10 (pg 105).</p>
24 Sep 2019	<p>Respondent No 1 passed an order stating that he shall function from Delhi on certain dates following the "<i>No-objection letter dated 6 Jun 2019</i>" from the Under Secretary communicating the approval purportedly from the Chief Secretary. The order delegated certain matters to the Upa-Lokayukta including matters related to grant of leave; matters related to promotion, disciplinary matters, matters under Sections 8, 27, 32 and 33 of the Act but not "<i>any matters with serious administrative consequences</i>". The order further stated that any pressing issues must be brought to the notice of the Respondent electronically.</p> <p>A true copy of the order of Respondent No 1 dated 24 Sep 2019 is at Ann P/11 (pg 106-107).</p>

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2 Oct 2019	<p>Temjen Toy, Chief Secretary recorded the following remarks with respect to the 'approval' for Respondent No 1 to function from Delhi online, which was communicated to him by the Under Secretary by letter dated 6 Jun 2019:</p> <p><i>"This decision was taken rather hastily, and we will need to review it. Approval of CS & CM were not taken. They agree to reverse the approval."</i></p> <p>A true copy of the letter from the Petitioner to Respondent No 1 dated 2 Oct 2019 is at Ann P/12 (pg 108).</p>
4 Oct 2019	<p>Deputy Secretary forwarded the request received from the Respondent "to function from Delhi ONLINE" for concerned authority to decide.</p> <p>A true copy of file notings from Deputy Secretary dated 4 Oct 2019 is at Ann P/13 (pg 109).</p>
8 Oct 2019	<p>Deputy Secretary, Govt of Nagaland addressed a letter to Respondent No 1 stating that the letter dated 6 Jun 2019 stood withdrawn with immediate effect as it did not have the approval of the Chief</p>

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	<p>Secretary. It further stated as follows:</p> <p><i>"It is also proposed to hold an inquiry as to how this misleading letter was issued from this Department."</i></p> <p>A true copy of the letter from Petitioner to Respondent No 1 dated 8 Oct 2019 is at Ann P/14 (pg 10).</p>
16 Nov 2019	<p>Respondent No 1 issued the aforesaid self-serving regulations after his request had been denied by the Petitioner, which casts an even greater cloud of impropriety over the request made in the first place. Respondent No 1 appears to have been playing hide and seek with the government and its officials for seeking favours from the government, which is antithetical to the objective of the office of a Lokayukta.</p> <p>A true copy of "<i>Regulation of Nagaland Lokayukta 2019</i>" framed by Respondent No 1, notified on 16 Nov 2019 is at Ann P/15 (pg 111-117).</p>
24 Sep 2019	<p>I Meyionen, Inspector-General of Police and Director, Office of Lokayukta, State of Nagaland ("IGPD"), addressed a letter to Deputy Commissioner, Dimapur stating</p>

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	<p>that Respondent carries the same status as the Chief Justice of any High Court, and therefore, may be exempted from frisking at the Guwahati airport upon his arrival. A similar letter was written to the Chief Secretary, Government of Rajasthan on 18 Dec 2019.</p> <p>A true copy of the letter from IGPD to Deputy Commissioner, Dimapur dated 24 Sep 2019 is at Ann P/16 (pg 118).</p>
26 Sep 2019	<p>IGPD addressed a letter to the Chief Secretary stating that the security of Lokayukta has been graded as "Y Plus" and that the matter of exemption from frisking at all airports may be taken up with the Bureau of Civil Aviation Security, Government of India. This letter was accompanied by a detailed itinerary of travel for Respondent No 1, which reflected that he was travelling out of Kohima two to three times a month.</p> <p>A true copy of the letter from IGPD to Chief Secretary dated 26 Sep 2019 is at Ann P/17 (pg 119-120).</p>

<p>16 May 2019</p>	<p style="text-align: right;">U</p> <p>Respondent No 1 addressed a letter to the Chief Secretary stating that he had not been consulted on the purchase of articles essential for furnishing his official bungalow at par with the bungalow of a Chief Justice of a High Court. Respondent No 1 specifically stated that the Chief Secretary's office should ensure physical verification of the quality and price of such articles prior to payment for the same</p> <p>A true copy of the letter from Respondent No 1 to Chief Secretary dated 16 May 2019 is at Ann P/18 (pg 121).</p>
<p>NIL</p>	<p>Respondent No 1 had personally chosen his current residence out of the available bungalows. In fact, the chosen bungalow was then repaired and renovated as desired by him at a cost of Rs 8,92,500/- with an additional cost of Rs 5,50,000/- for the interiors and furniture. In addition to this, the staff quarters of Type I and Barrack I near the entrance gate were also renovated at a cost of Rs. 3,37,100/-. Respondent No 1 also demanded the construction of; (i) a boundary wall / security fencing around</p>

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his residence; and (ii) safety tank for security guard quarters including water supply and sanitation, which are presently underway and are estimated to cost Rs 23,10,000/- and Rs. 3,26,900/- respectively. The complete project would cost the state exchequer a sum of Rs 46,79,000/- in toto. A true copy of the construction plan and photographs of the residential bungalow dated NIL are at **Ann P/19** (pg ¹²²⁻¹²⁵). A true copy of the abstract of the costs of renovation dated NIL is at **Ann P/20** (pg ¹²⁶⁻¹³⁰).

9 Dec 2019 Respondent No 1 directed the Nagaland Lokayukta Secretary to address yet another communication to the Chief Secretary stating that there is "no proper accommodation with required infrastructure and amenities for Residential Office and Court Room and further he has to travel on hilly roads a long distance everyday to reach office, it would be ideal for the State government to consider the request for allotment of Chief Minister's old Bungalow as designated residence for Lokayukta", as

	<p>the Chief Minister had moved out and may not need the old bungalow.</p> <p>A true copy of the letter from Respondent No 1 to Petitioner dated 9 Dec 2019 is at Ann P/21 (pg 131)).</p>
<p>9 Aug 2019</p>	<p>On 9 Aug 2019, Nagaland Lokayukta Secretary was directed to seek approval of additional Grade IV staff member for the Upa-Lokayukta as six out of the seven staff members approved earlier were arrogated by Respondent No 1. Respondent No 1 had also requested in an earlier letter dated 26 Jul 2019 that four contingency staff members allotted to him be converted to 'office peons'.</p> <p>A true copy of the letter from Nagaland Lokayukta Secretary to the Petitioner dated 9 Aug 2019 is at Ann P/22 (pg 132)).</p>
<p>22 Jul 2019</p>	<p>Respondent No 1 has virtually taken away the powers of the Upa-Lokayukta, and his prejudice against the Nagas is apparent in his day-to-day conduct. Respondent No 1 passed an order dated 22 Jul 2019 (<i>vide</i> order No. NL/LOK/ESTT/19/2019/2096) in supersession of all other orders passed</p>

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by him since assumption of office. to the following effect:

- i. Oldest 30 Regular Cases shall be dealt with by the Ld Upa-Lokayukta. They shall be disposed of expeditiously and status report shall be submitted to Respondent No 1;
- ii. All fresh complaints filed under the Act shall be placed before Respondent No 1 *"for permission and order for registration as Preliminary Enquiry or Regular Case, and in case, the Lokayukta is not available in Kohima, the same can be obtained electronically from wherever he is;*
- iii. *"That all Preliminary Enquiry cases pending or be registered in future shall be supervised, decided and disposed of. by the Lokayukta unless he allots such cases with specific order(s) to the Upa-Lokayukta as PE or upon its conversion as Regular Case".*

A true copy of the order passed by Respondent No 1 dated 22 Jul 2019 is at

Ann P/23 (pg 133).

26 Jul 2019

The Upa-Lokayukta had addressed a letter (marked as Confidential) to the Additional Chief Secretary to the Chief Minister highlighting the aforesaid order dated 22 Jul 2019 stating that Respondent No 1 has violated the provisions of Section 11 of the Act. He further stated that the power of the Lokayukta to make regulations under Section 33 of the Act has been bestowed with the objective of carrying out the purpose(s) of the Act, such as fixation of normal working hours, holding of sittings of the Lokayukta at places other than the place of ordinary sittings, procedure for conduct of proceedings, prescribed forms in which complaints must be made, and such forms and notices as may be necessary for carrying out inquiry and investigation, and matters of appointment. However, the Lokayukta is not entitled to override any provisions of the Act by way of regulation(s) made pursuant to Section 33 of the Act. Therefore, the Upa-Lokayukta urged the State Government to intervene in the matter at the earliest.

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	<p>A true copy of the letter from the Upa-Lokayukta to the Additional Chief Secretary to the Chief Minister dated 26 Jul 2019 is at Ann P/24 (pg 134-137).</p>
Feb 2020	<p>The first annual report of the Nagaland Lokayukta for the session 2019-2020 (the "Report") was presented by Respondent No 1. In a sharp departure from statutory and constitutional convention, Respondent No 1 used this platform to share his personal grievances and opinions laced with liberal criticism of the Naga tribal community and implicitly casting aspersions on their character as well. The Report also comprises of several pages of self-laudatory comments and a list of personal achievements.</p> <p>A true copy of the annual report of Nagaland Lokayukta for the session 2019-2020 is at (Ann P/25, pg 138-147).</p>
27 Aug 2019	<p>Order of Respondent No 1 directing that in all matters where the Lokayukta Organisation issues notice to government departments, such departments shall file documents only after seeking advice from</p>

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	<p>the Law Secretary.</p> <p>A true copy of the order of Respondent No 1 dated 27 Aug 2019 is annexed as Ann P/26 (pg 148-149).</p>
14 Nov 2019	<p>Petitioner filed an affidavit, in compliance with order dated 27 Aug 2019, in relation to a complaint filed by one Mr Yhoshü based on the records available with the Petitioner even though a copy of the complaint was not supplied. The affidavit stated that the issue raised in the complaint, being the seniority and promotion of one Mr Ao, does not appear to be within the subject-matter jurisdiction of Respondent No 1. Moreover, the complaint has been filed 27 years after the alleged cause of grievance arose.</p> <p>A true copy of the Petitioner's affidavit-in-opposition dated 14 Nov 2019 is annexed as Ann P/27 (pg 150-155).</p>
3 Dec 2019	<p>Respondent No 1 passed an order stating that if "<i>such casual legal advice devoid of basis of law is pressed into service by State legal advisors, the State Government may face serious troubles before judicial forums</i>".</p>

	<p>The said order went on to make remarks about the legal officer who had formulated this opinion, stating that they are "<i>either ignorant about the law or has given the advice without even having a glance at the provision of the Lokayukta Act</i>".</p> <p>A true copy of the order of Respondent No 1 dated 3 Dec 2019 is at Ann P/28, (pg 156-158).</p>
5 Feb 2020	<p>The Petitioner filed an application seeking grant of additional time to file the affidavit in accordance with the directions in order dated 3 Dec 2019.</p> <p>A true copy of the Petitioner's application dated 5 Feb 2020 is at Ann P/29, (pg 159-165).</p>
3 Dec 2019	<p>Observations of Respondent No 1 as recorded in his order dated 3 Dec 2019 were reported in <i>The Morning Express</i>.</p> <p>A true copy of the print and online versions of the news report from <i>The Morning Express</i> dated 3 Dec 2019 is at Ann P/30, (pg 166).</p>
4 Dec 2019	<p>Observations of Respondent No 1 as recorded in his order dated 3 Dec 2019 were reported in <i>The Eastern Mirror</i>.</p>

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	<p>A true copy of the news report (print) from <i>The Eastern Mirror</i> dated 4 Dec 2019 is annexed as Ann P/31 (pg 167-168).</p>
4 Dec 2019	<p>Observations of Respondent No 1 as recorded in his order dated 3 Dec 2019 were reported in <i>The Nagaland Page</i>.</p> <p>A true copy of the news report (online) from <i>The Nagaland Page</i> dated 4 Dec 2019 is annexed as Ann P/32 (pg 169-170).</p>
4 Mar 2020	<p>Respondent No 1 issued a direction to the Principal Secretary, Department of Urban Development and Municipal Affairs to report at the Lokayukta Police Station to provide clarifications in a matter being investigated by the Nagaland Lokayukta Police pertaining to "the alleged pathetic condition of civic amenities within Dimapur city".</p> <p>A true copy of the letter from Nagaland Lokayukta to the Principal Secretary dated 4 Mar 2020 is at Ann P/33 (pg 171-173).</p>
16 Mar 2020	Hence, this writ petition.

IN THE SUPREME COURT OF INDIA AT NEW DELHI
EXTRAORDINARY CIVIL ORIGINAL JURISDICTION
UNDER ARTICLE 32 READ WITH ARTICLE 142 OF THE
CONSTITUTION OF INDIA.

WRIT PETITION (CIVIL) NO OF 2020

IN THE MATTER OF:

STATE OF NAGALAND
THROUGH ITS ADDITIONAL CHIEF SECRETARY
AND RESIDENT COMMISSIONER
29, AURANGZEB ROAD, NAGALAND HOUSE
NEW DELHI - 110011 ...PETITIONER

VERSUS

1. CHAIRPERSON, LOKAYUKTA
FOR THE STATE OF NAGALAND
NEW SECRETARIAT ROAD, THIZAMA
NAGALAND - 797003 ...RESPONDENT NO 1
(SOLE CONTESTING RESPONDENT)

2. UNION OF INDIA
THROUGH THE SECRETARY
MINISTRY OF LAW AND JUSTICE
4TH FLOOR, A-WING, SHASTRI BHAWAN
NEW DELHI- 110001 ...RESPONDENT NO 2
(PRO FORMA RESPONDENT)

3. ASHWINI KUMAR UPADHYAY
15, M.C. SETALVAD CHAMBERS BLOCK,
SUPREME COURT OF INDIA,
NEW DELHI ...RESPONDENT NO 3
(PRO FORMA RESPONDENT)

**WRIT PETITION UNDER ARTICLES 32 READ WITH
ARTICLE 142 OF THE CONSTITUTION OF INDIA PRAYING
FOR:**

**(I) A WRIT, ORDER, OR DIRECTION IN THE NATURE OF
MANDAMUS OR OTHERWISE TO RESPONDENT NO 1
TO ASSIGN / TRANSFER ALL PENDING CASES
BEFORE HIM TO THE UPA-LOKAYUKTA(S),**

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(II) A WRIT, ORDER, OR DIRECTION IN THE NATURE OF PROHIBITION OR OTHERWISE TO RESPONDENT NO 1 TO CEASE EXERCISE OF ALL HIS POWERS AND FUNCTIONS AS NAGALAND LOKAYUKTA / CHAIRPERSON, LOKAYUKTA FOR THE STATE OF NAGALAND (AS PER THE NAGALAND LOKAYUKTA ACT, 2017 (THE "ACT")), AND

(III) APPROPRIATE ORDER(S) OR DIRECTION(S) IN EXERCISE OF ITS POWERS UNDER ARTICLE 142 TO ENSURE THAT (A) THE INSTITUTIONAL INTEGRITY OF THE POST OF NAGALAND LOKAYUKTA AND THE SPIRIT OF THE ACT ARE PRESERVED, AND (B) THE OFFICE OF NAGALAND LOKAYUKTA IS OCCUPIED BY A FIT, PROPER, AND COMPETENT PERSON AS PER THE ACT

MOST RESPECTFULLY SHOWETH:

1. That the present writ petition is being filed praying that this Hon'ble Court may be pleased to:
 - a. issue a writ, order, or direction in the nature of *mandamus* or otherwise to Respondent No 1 to assign / transfer all pending cases before him to the Upa-Lokayukta(s) for the State of Nagaland;
 - b. issue a writ, order, or direction in the nature of prohibition or otherwise to Respondent No 1 to cease exercise of all his powers and functions as Nagaland Lokayukta / Chairperson, Lokayukta for the State of Nagaland (as per the Nagaland Lokayukta Act, 2017 (the "Act")); and
 - c. issue appropriate order(s) or direction(s) in exercise of its powers under Article 142 to ensure that (a) the institutional integrity of the post of Nagaland Lokayukta and the spirit of the Act are preserved, and (b) the office

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of Nagaland Lokayukta is occupied by a fit, proper, and competent person as per the Act.

2. That the Petitioner has no alternate and equally efficacious remedy in the present case. The Petitioner has not filed any other writ petition or commenced any other legal proceedings in respect of the subject-matter of this writ petition.
3. Respondent No 2 is a *pro forma* respondent as the Nagaland Lokayukta Act, 2017 (the "Act") was enacted pursuant to Section 63 of the Lokpal and Lokayukta Act, 2013. Respondent No 3 was the petitioner in Writ Petition (C) No 684 of 2016 before this Hon'ble Court. He is a *pro forma* respondent as the present writ petition arises from orders passed in the said writ petition, wherein the Petitioner was granted liberty to file this writ petition by this Hon'ble Court on 13 Dec 2019:

"The State of Nagaland is granted liberty to file a separate petition pertaining to the functioning of the Lokayukta in Nagaland."

A true copy of the order of this Hon'ble Court granting liberty to the Petitioner dated 13 Dec 2019 is at **Ann P/1 (pg 53-57)**.
4. That it is imperative that the prayers sought in the writ petition be granted by this Hon'ble Court in exercise of its jurisdiction under Article 32 read with Article 142 in order to protect the institutional autonomy and propriety

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of the office of Lokayukta which, in the constitutional and statutory scheme, is necessary to ensure the preservation of the legitimate rights and expectations under Article 14, *inter alia*, of the residents of Nagaland against arbitrary / unreasonable action of statutorily appointed office bearers (including Respondent No 1).

FACTS OF THE CASE

5. That on 11 Feb 2019, this Hon'ble Court had passed the following order in WP (C) No 684 of 2016 with regard to the appointment of Respondent No 1 / Nagaland Lokayukta:

"We would require the State of Nagaland to file an affidavit before the Court indicating the precise work and tasks undertaken by the newly appointed Lokayukta, specifically, the cases dealt with by him and the orders passed.

The aforesaid report of the work undertaken will be filed by the end of April, 2019 when this matter will be considered along with the cases of Odisha, Mizoram and Manipur."

The fact that such an order was passed only with respect to the appointment of Respondent No 1 as Nagaland Lokayukta, and not with respect to the Lokayukta(s) of any other state(s) speaks for itself. It is implicitly clear that Respondent No 1 was treated, for all practical

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purposes, to be virtually on probation by this Hon'ble Court.

A true copy of the order of this Hon'ble Court in WP (C) No 684 of 2016 dated 11 Feb 2019 is at **Ann P/2 (pg 58-65)**).

6. That on 13 Mar 2019, Respondent No 1 was formally appointed as the Nagaland Lokayukta / Chairperson, Lokayukta for the State of Nagaland (hereinafter referred to as "Nagaland Lokayukta" / "Respondent No 1"). A true copy of the letter from the Petitioner to Respondent No 1 dated 13 Mar 2019 is at **Ann P/3 (pg 66)**).
7. That on 25 Apr 2019, the Petitioner filed an affidavit as per the aforesaid order dated 11 Feb 2019 stating, *inter alia*:
 - a. Respondent No 1 had proposed that the erstwhile State Vigilance Commission be merged with the office of Lokayukta;
 - b. Investigating officers had been directed to prepare status reports of pending cases of preliminary enquiry;
 - c. Fresh complaints had been directed to be refiled in the format prescribed under Section 33 of the Act; and
 - d. A conference had been held on 15 Apr 2019 for awareness about the new office of the Nagaland Lokayukta.

A true copy of the affidavit dated 25 Apr 2019 filed in WP (C) No 684 of 2016 is at **Ann P/4 (pg 67-89)**).

8. That on 26 April 2019, with respect to the aforesaid affidavit / status report, this Hon'ble Court only recorded the following in WP (C) No 684 of 2016:

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"Insofar as the State of Nagaland is concerned, the status report filed with regard to the work done has been perused."

A true copy of the order of this Hon'ble Court in WP (C) No 684 of 2016 dated 26 April 2019 is at **Ann P/5 (pg ⁹⁰⁻⁹³)**.

Hence, no substantive order was passed regarding the functioning of Respondent No 1 in furtherance of what was contemplated in the order dated 11 Feb 2019. Subsequently, when the matter was listed on 13 Dec 2019, as mentioned above, this Hon'ble Court granted liberty to the Petitioner to file the present petition as a separate petition (pertaining to the issues arising with regard to the functioning of the Respondent No 1).

9. That April 2019 onwards, especially after filing of the affidavit as directed by this Hon'ble Court, there have been a number of incidents where the conduct of Respondent No 1 has fallen far short of the standard expected of someone in his position. Numerous instances of whimsical and capricious behaviour as well as unjustified and arbitrary demands have made it untenable for him to continue to exercise the powers and functions of Nagaland Lokayukta. These incidents are reflected in the documentary record in some instances and have been reliably communicated by state government officials in others. For the purposes of the present writ petition, the following facts pertaining to the

functioning of Respondent No 1 are pertinent, which may⁷ be considered to be in continuation of / as an addendum to the affidavit dated 25 Apr 2019 in respect of which no substantive order has been passed by this Hon'ble Court yet.

Continuance as arbitrator

- a. That on 18 Apr 2019, Respondent No 1 sent a request in writing to Tali Temjen Toy, Chief Secretary, Government of Nagaland ("Chief Secretary") for relaxation of Section 4(2)(c) of the Nagaland Lokayukta Act, 2017 (hereinafter "Act") in terms of Section 32A of the Nagaland Lokayukta (Amendment) Bill, 2019 to permit him to continue with a prior engagement as arbitrator for a matter titled *Synergy Ispat Pvt Ltd v Mrs Barbara Elizabeth Simoes*. A true copy of the letter from Respondent No 1 to the Petitioner dated 18 Apr 2019 is at **Ann P/6 (pg 94)**.
- b. There is a clear prohibition in law for the Lokayukta to hold any other office. Section 4 (*Lokayukta or Upa-Lokayukta to hold no other office*) of the Act states:

"The Lokayukta or Upa-Lokayukta shall not be a-

(1) Member of Parliament or a Member of the Legislature of any State.

(2) A person who has been removed or dismissed from the service of the Union or a State, and shall not hold any office of trust or profit (other than his office as the Chairperson or

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a Member) or be affiliated with any political party or carry on any business of practice any profession and, accordingly, before he enters upon his office, a person appointed as the Chairperson or a Member, as the case may be shall, if -

(a) He holds any office of trust or profit, resign from such office, or

(b) He is carrying on any business, sever his connection with the conduct and management of such business; or

(c) He is practicing any profession, cease to practice such profession.

c. That although Respondent No 1 knew that such 'relaxation' was not permissible under the present Act, and that his continuance as an arbitrator would require an amendment to the Act, Respondent No 1 stated that grant of such permission is commonplace where such engagement has been accepted prior to appointment to a government office. He also annexed a letter from one the parties to pursue the present request lest the parties incur additional expenses.

d. That subsequently, on 25 Jul 2019, Respondent No 1 directed the Nagaland Lokayukta Secretary to withdraw the letter from Respondent No 1 to the Petitioner dated 18 Apr 2019 in view of non-response from the competent authority for three months. This letter was marked to the

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Additional Chief Secretary, Principal Secretary, and Law Secretary.

A true copy of the letter from Respondent No 1 to the Petitioner dated 25 Jul 2019 is at **Ann P/7 (pg 95)**.

Functioning from Delhi "ONLINE"

- e. That on or around the date of his appointment as well as shortly after the aforesaid affidavit dated 25 April 2019 was filed on behalf of the Petitioner, Respondent No 1 had sought permission to work as Lokayukta not from Kohima but from Delhi. He was informed that that would not be permissible according to the statute, and would also be contrary to the purpose of the central and state legislations.
- f. That after being so informed, Respondent No 1 sent written communications reiterating the said request. On 16 May 2019, Respondent No 1 addressed a letter to the Chief Secretary requesting the Petitioner to "allow" him to function from Delhi / seeking permission "*to function from Delhi ONLINE*". Apart from perfunctory statements about
- (a) lack of proper accommodation;
 - (b) having to travel a long distance from his place of residence to the Lokayukta office;
 - (c) absence of a good law library; and

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(d) there being only 'meagre routine works', there were mainly two dubious justifications provided in support of the request in the said letter.

A true copy of the letter from Respondent No 1 to the Petitioner dated 16 May 2019 is at **Ann P/8 (pg 96-97)**.

g. That, first, the aforesaid letter from Respondent No 1 cited so-called 'security reasons', by referring to an "unfortunate incident caused by my PSO by cocking his service weapon, a carbine said to be loaded with 30 bullets...". Inexplicably, the letter did not indicate the sequence of events leading to such an incident, and/or the status of the criminal proceedings with regard to that incident.

h. That second, Respondent No 1 stated that:

- "...the Act is absolutely silent about the head-quarters of the Lokayukta organisation and place of functioning of the Lokayukta"
- "This is not so that there is a regular flow of work, and now, mostly I have been doing only meagre routine works, which I can do from my residence in Delhi or Nagaland houses in Delhi 'ONLINE' which is, now a very common practice in 'CORPORATE FUNCTIONING'"

The aforesaid letter further proposed that the Upa-Lokayukta may look after routine work while the Respondent is in Delhi.

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- i. That when Respondent No 1 made the aforesaid request, he was informed that such a concession without any amendment of the Act would amount to granting favours and therefore, his request had to be declined.
 - j. That it is relevant that the aforesaid letter of 16 May 2019 was written subsequent to his request for continuance as an arbitrator (which was impermissible in law, as stated above). Each time any uncalled-for demands / complaints were not heeded to, Respondent No 1 made further demands / complaints to push his case.
 - k. That on 29 May 2019, File No AR-3/GEN-362/2019 regarding request received from Respondent No 1 "*to function from Delhi ONLINE*" was forwarded for comments and decision of the concerned authority.
 - l. That on 3 Jun 2019, the Principal Secretary (Abhishek Singh), recorded the following notings on the aforesaid file:
 - i. "*There should be no objection on Lokayukta operating from Kohima or Delhi*"; and
 - ii. "*Threat Perception Committee to consider the matter of security concerns.*"

These notings were made without the direct knowledge or consent of the Chief Secretary.

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A true typed copy (along with its true copy) of the file notings dated 29 May 2019 to 3 Jun 2019 is at **(Ann P/9, pg 98-104)**.

- m. That immediately following the aforesaid comments from the Principal Secretary, on 6 Jun 2019, the Under Secretary, Personnel and Administrative Reforms Department, Government of Nagaland addressed a letter to the Respondent No 1 (incorrectly) stating the his request "*to function from Delhi ONLINE*" "*has the approval of Chief Secretary*". It is noteworthy, that the File No AR-3/GEN-362/2019 does not contain notings recording the explicit approval of Chief Secretary on this matter. This letter was issued only to the Lokayukta and even copies of the said communication was not endorsed to any other department.

A true copy of the letter from the Petitioner to Respondent No 1 dated 6 Jun 2019 is at **(Ann P/10, pg 105)**. In fact, the Chief Secretary's comments on this matter are recorded in his letter dated 2 Oct 2019 and have been elaborated in the following paragraphs.

- n. That on 24 Sep 2019, Respondent No 1 passed an order stating that he shall function from Delhi on certain dates following the "*No-objection letter dated 6 Jun 2019*" from the Under Secretary communicating the approval purportedly from the Chief Secretary. The order delegated

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certain matters to the Upa-Lokayukta including matters related to grant of leave, matters related to promotion, disciplinary matters, matters under Sections 8, 27, 32, and 33 of the Act but not "*any matters with serious administrative consequences*". The order further stated that any pressing issues must be brought to the notice of the Respondent electronically.

A true copy of the order of Respondent No 1 dated 24 Sep 2019 is at **Ann P/11** (pg 106-107).

o. That Respondent No 1 had been personally informed of the inability of the Petitioner to accede to his request. Respondent No 1, being a former Chief Justice of a High Court, was well-aware of the fact that a legislative amendment to the Act was necessary and that approval of the Chief Secretary, in the absence of such an amendment, would not suffice to enable him to function from Delhi. As a result of this order dated 24 Sep 2019, the letter dated 6 Jun 2019 communicating the purported approval on behalf of the Chief Secretary, without his direct knowledge, came to light.

p. That on 2 Oct 2019, Temjen Toy, Chief Secretary recorded these remarks with respect to the 'approval' for Respondent No 1 to function from Delhi online:

"This decision was taken rather hastily, and we will need to review it. Approval of CS & CM were not taken. They agree to reverse the approval."

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A true copy of the letter from the Petitioner to Respondent No 1 dated 2 Oct 2019 is at **Ann P/12 (pg. 108)**

- q. That on 4 Oct 2019, the Deputy Secretary forwarded the request received from the Respondent "*to function from Delhi ONLINE*" for concerned authority to decide.

A true copy of file notings from Deputy Secretary dated 4 Oct 2019 are at **Ann P/13 (pg 109)**.

- r. That on 8 Oct 2019, Deputy Secretary, Govt of Nagaland addressed a letter to Respondent No 1 stating that the letter dated 6 Jun 2019 stood withdrawn with immediate effect as it did not have the approval of the Chief Secretary. It further stated:

"It is also proposed to hold an inquiry as to how this misleading letter was issued from this Department."

A true copy of the letter from Petitioner to Respondent No 1 dated 8 Oct 2019 is at **Ann P/14 (pg 110)**.

- s. Respondent No 1 did not respond to this communication but began to show his ire by indiscriminately issuing various notices to honest officials. Thereafter, he devised an ingenious method to allow himself to work from Delhi by issuing self-serving regulations, which state as follows:

"Regulation 3: Seat / Headquarters of the Nagaland Lokayukta

The Nagaland Lokayukta Act 2017 (Act No 1 of 2018) and the Nagaland Lokayukta (Amendment) Act 2019 (Act No 1

of 2019) extend to the whole State of Nagaland and apply also to the Public servants posted outside Nagaland in connection with the affairs of the State of Nagaland.

The Act does not provide for Seat / Headquarters of the Nagaland Lokayukta. Thus, the Nagaland Lokayukta and Upa-Lokayukta may function from any place having the Nagaland State Government Establishment being run by Public servants of the Nagaland inside the State and outside depending upon circumstances and subject to orders from the Lokayukta of Nagaland".

- t. That it is noteworthy that Respondent No 1 issued the aforesaid self-serving regulations after his request had been denied by the Petitioner, which casts an even greater cloud of impropriety over the request made in the first place. Respondent No 1 appears to have been playing hide and seek with the government and its officials for seeking favours from the government, which is antithetical to the objective of the office of a Lokayukta.

A true copy of "Regulation of Nagaland Lokayukta 2019" framed by Respondent No 1, notified on 16 Nov 2019 is at **Ann P/15 (pg 111-117)**.

- u. That it is pertinent to point out that on one hand, Respondent No 1 cites "meagre work" as an excuse for seeking relocation to Delhi, and on the other hand, he seeks appointment of additional Upa-Lokayuktas when

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his demands are not met. This is a clear contradiction apparent in such conduct.

- v. That Respondent No 1 is behaving in a manner that suggests that he has become a law unto himself and has no respect for the rule of law, and in particular, the legislature. This type of maverick decision-making indicates that Respondent No 1 is unfit to hold an office that requires him to lead by example.

Deviation from Security Protocol

- w. That on 24 Sep 2019, I Meyionen, Inspector-General of Police and Director, Office of Lokayukta, State of Nagaland ("IGPD"), addressed a letter to Deputy Commissioner, Dimapur stating that Respondent No 1 carries the same status as the Chief Justice of any High Court, and therefore, may be exempted from frisking at the Guwahati airport upon his arrival. A similar letter was written to the Chief Secretary, Government of Rajasthan on 18 Dec 2019.

A true copy of the letter from IGPD to Deputy Commissioner, Dimapur dated 24 Sep 2019 is at **Ann P/16 (pg 118)**.

- x. That on 26 Sep 2019, IGPD addressed a letter to the Chief Secretary stating that the security of Lokayukta has been graded as "Y Plus" and that the matter of exemption from frisking at all airports may be taken up with the Bureau

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of Civil Aviation Security, Government of India. This letter was accompanied by a detailed itinerary of travel for Respondent No 1, which reflected that he was travelling out of Kohima two to three times a month.

A true copy of the letter from IGPD to Chief Secretary dated 26 Sep 2019 is at **Ann P/17 (pg 119-120)**.

- y. That Respondent No 1 demanded that the Commissioner of Police be present at the Dimapur airport at the time of his arrival and departure from the airport each time. The Respondent had made further unreasonable requests regarding deployment of army personnel for his protection. However, he had been informed that such protection was not available even to the Chief Justice of India and therefore, could not be extended to him.

Allotment of Chief Minister's bungalow

- z. That on 16 May 2019, Respondent No 1 addressed a letter to the Chief Secretary stating that he had not been consulted on the purchase of articles essential for furnishing his official bungalow at par with the bungalow of a Chief Justice of a High Court. Respondent No 1 specifically stated that the Chief Secretary's office should ensure physical verification of the quality and price of such articles prior to payment for the same.

A true copy of the letter from Respondent No 1 to Chief Secretary dated 16 May 2019 is at **Ann P/18 (pg 121)**).

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- aa. That it is relevant to point out that Respondent No 1 had personally chosen his current residence out of the available bungalows. In fact, the chosen bungalow was then repaired and renovated as desired by him at a cost of Rs 8,92,500/- with an additional cost of Rs 5,50,000/- for the interiors and furniture. In addition to this, the staff quarters of Type I and Barrack I near the entrance gate were also renovated at a cost of Rs. 3,37,100/-. Respondent No 1 also demanded the construction of; (i) a boundary wall / security fencing around his residence; and (ii) safety tank for security guard quarters including water supply and sanitation, which are presently underway and are estimated to cost Rs 23,10,000/- and Rs 3,26,900/- respectively. The complete project would cost the state exchequer a sum of Rs 46,79,000/- *in toto*. A true copy of the construction plan and photographs of the residential bungalow dated nil are at **Ann P/19** (pg 122-125). A true of copy of the letter of the Under Secretary (Budget) to the Senior Treasury Officer dated 17 December 2019 (along with an abstract of costs of renovation) is at **Ann P/20** (pg 126-130).
- bb. That after fulfilment of such excessive demands of Respondent No 1 at the expense of the state exchequer, he made another unjustified request for allotment of the former residence-cum-office of the Chief Minister. On 9 Dec 2019, Respondent No 1 directed the Nagaland

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Lokayukta Secretary to address yet another communication to the Chief Secretary stating that there is *"no proper accommodation with required infrastructure and amenities for Residential Office and Court Room and further he has to travel on hilly roads a long distance everyday to reach office, it would be ideal for the State government to consider the request for allotment of Chief Minister's old Bungalow as designated residence for Lokayukta"*, as the Chief Minister had moved out and may not need the old bungalow.

A true copy of the letter from Respondent No 1 to Petitioner dated 9 Dec 2019 is at **Ann P/21, (pg 131)**

cc. That when the Government officials refused to accede to this illegal and unjust demand, Respondent No 1 began to find excuses to call the officials to his office in order to admonish and humiliate them. Respondent No 1 also approached the Governor of Nagaland with a similar request. It is pertinent to point out that the Chief Minister's former office-cum-residence is utilized for various meetings with dignitaries, cabinet meetings etc, and has been converted to a VIP Guest House. It is submitted that a serious crisis of institutional integrity has arisen due to the unmindful conduct of Respondent No 1 which shows scant regard for expenses incurred at the cost of the state exchequer.

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dd. That, in view of the reasons cited by Respondent No 1 in his letter dated 9 Dec 2019, it must be pointed out that the actual distance between his residence and office in Kohima is only 8 km and could not possibly be said to hinder or even cause inconvenience to the discharge of the duties of Respondent No 1. In contrast, Respondent No 1 has expressed his desire to operate from Delhi even though the distance between Delhi and Kohima is over 2000 kms, not to mention that doing so was originally not permissible under the Act. Hence, none of his requests can be categorised as *bona fide* or with genuine reason, and it appears that Respondent No 1 prefers to accord primacy to his personal convenience over respect for law and the integrity of his office.

Other incidents

ee. That Respondent No 1 has repeatedly sought to highlight the institutional parity of the office of Lokayukta with that of a sitting Chief Justice of a High Court and thereby seek sanction of additional staff members of various categories. On 9 Aug 2019, Nagaland Lokayukta Secretary was directed to seek approval of additional Grade IV staff member for the Upa-Lokayukta as six out of the seven staff members approved earlier were arrogated by Respondent No 1. Respondent No 1 had also requested in an earlier letter dated 26 Jul 2019 that four

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contingency staff members allotted to him be converted to 'office peons'.

A true copy of the letter from Nagaland Lokayukta Secretary to the Petitioner dated 9 Aug 2019 is at **Ann P/22 (pg 132)**.

- ff. That Respondent No 1 has virtually taken away the powers of the Upa-Lokayukta, and his prejudice against the Nagas is apparent in his day-to-day conduct. Respondent No 1 passed an order dated 22 Jul 2019 (*vide* order No. NL/LOK/ESTT/19/2019/2096) in supersession of all other orders passed by him since assumption of office. The said order is, *inter alia*, to the following effect:
- i. Oldest 30 Regular Cases shall be dealt with by the Ld Upa-Lokayukta. They shall be disposed of expeditiously and status report shall be submitted to Respondent No 1;
 - ii. All fresh complaints filed under the Act shall be placed before Respondent No 1 "*for permission and order for registration as Preliminary Enquiry or Regular Case, and in case, the Lokayukta is not available in Kohima, the same can be obtained electronically from wherever he is*";
 - iii. "*That all Preliminary Enquiry cases pending or be registered in future shall be supervised, decided and disposed of. by the Lokayukta unless he allots such cases with specific order(s) to the Upa-Lokayukta as PE or upon its conversion as Regular Case*".

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A true copy of the order passed by Respondent No 1 dated 22 Jul 2019 is at (Ann P/23, pg 133).

gg. That the Act specifically empowers both the Lokayukta and Upa-Lokayukta to conduct investigation and preliminary enquiry. However, the Upa-Loakyukta was divested of this power of under the regulations framed by Respondent No 1. The Upa-Lokayukta had addressed a letter (marked as Confidential) to the Additional Chief Secretary to the Chief Minister highlighting the aforesaid order dated 22 Jul 2019 stating that Respondent No 1 has violated the provisions of Section 11 of the Act. He further stated that the power of the Lokayukta to make regulations under Section 33 of the Act has been bestowed with the objective of carrying out the purpose(s) of the Act, such as fixation of normal working hours, holding of sittings of the Lokayukta at places other than the place of ordinary sittings, procedure for conduct of proceedings, prescribed forms in which complaints must be made, and such forms and notices as may be necessary for carrying out inquiry and investigation, and matters of appointment. However, the Lokayukta is not entitled to override any provisions of the Act by way of regulation(s) made pursuant to Section 33 of the Act. Therefore, the Upa-Lokayukta urged the State Government to intervene in the matter at the earliest.

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A true copy of the letter from the Upa-Lokayukta to the Additional Chief Secretary to the Chief Minister dated 26 Jul 2019 is at **Ann P/24** (pg 133-137).

- hh. That this has resulted in Respondent No 1 himself conducting preliminary inquiries to the exclusion of the Upa-Lokayuktas for the twenty-four cases in the past one year. Further, Respondent No 1 has not passed a final order in any of those cases. It has also been informed that mistreatment of officers of the Nagaland Lokayukta and use of uncharitable words has become the order of the day.
- ii. That as mentioned hereinabove, the relentless efforts made by the Respondent to curry favour from the Government for obtaining the former residence of the Chief Minister was not entertained by the Government. Respondent No 1 appears to have vented his anger in a case registered against the Deputy Chief Minister in which he *inter alia* passed an order to the effect that the Chief Minister will conduct a preliminary inquiry against the Deputy Chief Minister and file an affidavit before Respondent No 1. It is relevant to point out that the authority to conduct preliminary inquiry is with Lokayukta/ its officials in terms of Section 11 of the Act or otherwise, in terms of Section 17, the Lokayukta may, in addition to the officials of Lokayukta, utilize the

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services of any officer or investigation agencies of the Government with prior intimation to it.

- jj. That Respondent No 1 is not empowered to direct the Chief Minister to conduct inquiry(s) or investigation(s) under the Act. Section 11 empowers Respondent No 1 to "direct any other person so authorised to make such preliminary inquiry as he deems fit". However, this section must be read in conjunction with Section 17 which specifies the machinery or officers that Respondent No 1 may use in aid of any investigation(s) to be conducted under the Act. Section 17(1) reads as follows:

"The Lokayukta or Upa-Lokayukta in addition to the officials of Lokayukta may for the purpose of conducting a preliminary inquiry or investigation under this Act, utilize the services of:

- a. *Any officer or investigation agency of the State Government with prior intimation to the competent authority of the State Government;*
- b. *Any officer or investigation agency of the Central Government, with the consent of that Government"*

It is submitted that the Chief Minister of a State cannot be considered to fall within the ambit of "any officer or investigation agency of the State Government".

Further, Section 25(4)(b) specifies, that the Lokayukta must submit its report in respect of a complaint against "the Chief Minister or a Member of the State Legislature

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with his recommendation to the Governor". Therefore, it is the duty of Respondent No 1 to conduct the preliminary inquiry and submit the report and his recommendations to the Governor instead of directing the Chief Minister to investigate.

kk. Misinterpreting Section 11, the Lokayukta has passed this illegal order by asking the Chief Minister to conduct preliminary enquiry as he could have only used the services of its officials or some other agencies of the State for the purpose of the conducting preliminary inquiry, and by no stretch of imagination the Chief Minister lies in any such category. Therefore, passing such orders reflects that Respondent No 1 is ignorant of the basic qualities of integrity and objectivity which are expected of a person holding the office of the Lokayukta (as highlighted in *Vineet Narain's* case).

ll. That in addition to the above, there have been numerous instances where Respondent No 1 has conducted himself in a manner that appears to deliberately demean the socio-cultural ethos of, and humiliate the local populace and institutions.

mm. That Respondent No 1 had, on one occasion, directed the IGPD to purchase two pairs of shoes from Dimapur, the commercial capital of Nagaland. The IGPD was required to 'Whatsapp' pictures of shoes for the approval of Respondent No 1, following which, he was required to

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bring the shoes so approved to Kohima, where Respondent No 1 resided. Respondent No 1 had been repeatedly advised not to mistreat members of the tribal community as his actions could lead to consequences seriously embarrassing for himself and the institution of Lokayukta, particularly in light of various legislations to protect such communities.

nn. That Respondent No 1 had also asked for his photograph to be displayed next to the photograph of the Governor, and Chief Minister of the State of Nagaland on official website of the State Government.

oo. That the first annual report of the Nagaland Lokayukta for the session 2019-2020 (the "Report") was presented by Respondent No 1. In a sharp departure from statutory and constitutional convention, Respondent No 1 used this platform to share his personal grievances and opinions laced with liberal criticism of the Naga tribal community and implicitly casting aspersions on their character as well. Such statements do not merit inclusion in an annual report to be presented by the corruption watchdog of the state. The Report also comprises of several pages of self-laudatory comments and a list of personal achievements. One such paragraph is extracted below:

"I am housed in an old, open and dripping Bungalow, much below my entitlement, without any fencing which may

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provide an easy access for miscreants to the building. The local police house guards do not seem to be vigilant during night and some time look to be inebriated. Moreover, I have to travel a long distance daily to reach my office although I am older than many of the Cabinet Members, may be much younger than them on my work table. I have given this background just to say that had there been any other person in my place, he would have run away for life from this place after handing over the charge to local Upa-Lokayukta appointed in consultation with Lokayukta. Such a design of some vested interests also cannot be ruled out. This reminds me of a story, may be untrue, about how Central Audit and Monitoring Team visiting Nagaland are scared and made to return after preparing reports about central projects only at Dimapur without actually visiting the sites and other places."

A true copy of the annual report of Nagaland Lokayukta for the session 2019-2020 is at **Ann P/25** (pg 138-147).

pp. That last but not the least, a live and ongoing illustration of the infelicitous attitude and indecorous conduct of Respondent No 1 is apparent from the proceedings in Enquiry No NLP-2/2019 pending before him. Without prejudice to the merits of the said pending case, apart from the wanton disregard of Respondent No 1 for the provisions of the Act, the documentary record establishes beyond any doubt that he has thrown to the wind

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fundamental rules of procedure, professionalism, and sobriety expected in the exercise of judicial / administrative functions.

qq. That the aforesaid proceedings have arisen from a complaint arising from the grievance of a Mr Yhoshü (the "Complainant"), who was in the post of Assistant Director / Functional Manager from 1993 until his superannuation in 2009. The Petitioner was asked to submit an affidavit in opposition to the complaint (a copy of which has not been provided to them). Based on the records available with the Petitioner regarding the said case, the subject-matter of the complaint appears to be regarding the issue of seniority and promotion of one Mr Ao ahead of the Complainant in 1992-93. It is a matter of record that the said complaint has only been filed in 2019, which is nearly 27 years after the alleged cause of grievance (despite the fact that the Complainant has received pensionary benefits from retirement).

rr. That Section 9(1) of the Act states:

"(1) Except as hereinafter provided, the Lokayukta or Upa-lokayukta shall not conduct any investigation under this Act in the cases of a complaint involving a grievance in respect of any action:

(a) If such action relates to any matter specified in the Second Schedule; or

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(b) If the complainant has or had any remedy by way of a proceeding before any forum or other authority;

Provided that nothing in clause (b) shall prevent the Lokayukta or Upa-Lokayukta from conducting an investigation, if the Lokayukta or, as the case may be, the Upa-Lokayukta, is satisfied that such person could not or cannot, for sufficient cause, have recourse to such remedy”.

In this regard, the Second Schedule to the Act includes:

“(d) Action taken in respect of appointments, removal, pay, discipline, superannuation or other matters relating to conditions of service of public servants...”.

It is the humble submission of the Petitioner that the subject-matter of the complaint falls under the excluded category of complaints under the Second Schedule (under Section 9(1)(a)). Even otherwise, if the Complainant had a genuine cause of action, he could have agitated it before the appropriate court / tribunal, and no cause appears to have been shown as to why he could have not have had recourse to such remedy (in terms of Section 9(1)(b)).

ss. That furthermore, Section 9(3) of the Act states:

“The Lokayukta or Upa-Lokayukta shall not investigate-

(a) Any complaint involving a grievance made after the expiry of a period of twelve months limitation from the date

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on which the action complained against becomes known to the complainant.

(b) Any complaint involving an allegation made after the expiry of five years from the date on which the action or conduct complained against is alleged to have taken place.

Provided that the Lokayukta or Upa-Lokayukta in respect of grievance or allegation, as the case may be, may entertain a complaint made after the expiry of the said period if the complainant shows sufficient cause for not making the complaint within the said period".

Therefore, the complaint is *ex-facie* barred under Section 9(3)(a).

- tt. That notwithstanding these express and mandatory statutory provisions, Respondent No. 1 has entertained the complaint even though it is outside his jurisdiction and not maintainable.
- uu. That as directed by the order of Respondent No 1 dated 27 August 2019, the Petitioner's aforesaid affidavit in opposition was vetted by its Justice & Law Department whose view (vide UO No 657 dated 24 September 2019) was excerpted in the affidavit as follows: "*The above Affidavit-in-opposition as proposed by the IDA Department have been examined and the above note proposed by the IDA Department may be inserted as shown above. Lokayukta is strictly for corruption related cases and such*

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service matters should not have been referred to it. However, the proposed draft affidavit is vetted".

A true copy of the order of Respondent No 1 dated 27 Aug 2019 is annexed as **Ann P/26** (pg 148-149). A true copy of the Petitioner's affidavit-in-opposition dated 14 Nov 2019 is annexed as **Ann P/27** (pg 150-155).

vv. That instead of adjudicating the issue of maintainability of the complaint and his jurisdiction within the framework of the Act, Respondent No 1 passed an order stating that if "*such casual legal advice devoid of basis of law is pressed into service by State legal advisors, the State Government may face serious troubles before judicial forums*". The said order went on to make remarks about the legal officer who had formulated this opinion, stating that they are "*either ignorant about the law or has given the advice without even having a glance at the provision of the Lokayukta Act*". Respondent No 1's intemperance is amply demonstrated as the order requires the Chief Secretary and the Home Commissioner of the State of Nagaland to file their affidavits as to "*how far it is safe for the people of Nagaland as also the State Government to depend upon such Law Officers for legal advice*". The said order directed that these affidavits identify the officer responsible and seek their explanation and incorporate it "*so that we may pass appropriate order(s) in respect of that officer while deciding and disposing of the case on merit on*

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the next date of hearing'. These observations / directions go far beyond the remit of exercise of any judicial / administrative authority.

A true copy of the order of Respondent No 1 dated 3 Dec 2019 is at **Ann P/28**, (pg 156-158).

On 5 Feb 2020, the Petitioner filed an application seeking grant of additional time to file the affidavit in accordance with the directions in order dated 3 Dec 2019.

A true copy of the Petitioner's applications dated 5 Feb 2020 is at **Ann P/29**, (pg 159-165).

ww. That much to the shock of the Petitioner, the aforesaid observations / directions have somehow found their way to multiple newspapers (both in print and online versions), as listed below:

- i. A true copy of the print and online versions of the news report from *The Morung Express* dated 3 Dec 2019 is marked as **Ann P/30**, (pg 166).
- ii. A true copy of the news report (print) from *The Eastern Mirror* dated 4 Dec 2019 is annexed as **Ann P/31** (pg 167-168).
- iii. A true copy of the news report (online) from *The Nagaland Page* dated 4 Dec 2019 is annexed as **Ann P/32** (pg 169-170).

xx. That the complaint is under the preliminary inquiry stage, and under Section 19 of the Act,

“Every preliminary inquiry or investigation under this Act shall be conducted in private and, in particular, the identity of the complainant and the public functionary affected by the preliminary inquiry or investigation shall not be disclosed to the public or the press or published in any manner before or during the preliminary inquiry or investigation.

Provided that the Lokayukta or Upa-Lokayukta may in his discretion, for the reasons to be recorded in writing, allow the publication or proceeding of his investigation or a part thereof at any stage of the proceedings”.

No reasons have been recorded to permit such publications, and thus, it is crystal clear that even this mandatory provision of the Act, which is necessary for a fair and impartial proceedings before the Lokayukta, has also been violated.

yy. That Respondent No 1 has continued to interfere in matters that are beyond the subject-matter jurisdiction of the Nagaland Lokayukta as per the Act. On 4 Mar 2020, Respondent No 1 issued a direction to the Principal Secretary, Department of Urban Development and Municipal Affairs to report at the Lokayukta Police Station to provide clarifications in a matter being investigated by the Nagaland Lokayukta Police pertaining

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to "the alleged pathetic condition of civic amenities within Dimapur city".

A true copy of the letter from Nagaland Lokayukta to the Principal Secretary dated 4 Mar 2020 is at **Ann P/33 (pg**

AT-172
). Exercise of judicial powers, diktats, conclusion

zz. That Respondent No 1 appears to crave parity with a sitting Chief Justice of High Court not only in entitlement but also subject-matter jurisdiction, as reflected in arbitrary diktats issued by him. The behaviour of Respondent No 1 makes it evident that it is as if he considers himself to be continuing as a judge of a High Court, even after retirement. The aforementioned series of incidents involving the Respondent No 1 is proving to be counter-productive to the purpose and dignity of the office of the Lokayukta. The working environment in the office of the Nagaland Lokayukta has become intimidating and unwelcoming for others, who are largely from the local population. Moreover, this adversely affects the morale of government functionaries causing grave harm to the public interest and has brought work virtually to a standstill, while Respondent No 1 has sought to publicise and advertise his own virtues at the same time.

aaa. That the sum and substance of these incidents was orally brought to the attention of this Hon'ble Court on 13 Dec 2019, in light of which liberty to file the present petition was granted. Hence, this writ petition.

35 GROUNDS

10. That the continuing conduct of the Respondent has made his functioning as the Lokayukta of the State of Nagaland untenable. The incidents have brought disrepute to and lowered the dignity of the solemn office that he holds. Although there is a specific procedure for removal of Lokayukta by the legislative wing of government, to do so may result in even greater harm to the integrity and perception of the role of the Lokayukta, which makes it imperative that the prayers sought in the present writ petition be granted to salvage its prestige and prevent further damage to it.
11. That Nagaland Lokayukta Act 2017 was enacted pursuant to Section 63 of the Lokpal and Lokayukta Act 2013, which contemplates that the state Lokayukta will "*deal with complaints relating to corruption*" against public functionaries. The purpose of the 2013 Act reiterates this objective. According to Section 3(5) of the 2017 Act, having '*impeccable integrity*' is a necessary and relevant factor for appointment as Lokayukta.
12. That any person who holds an office bestowed with legitimate authority, both legal and ethical, ought to exercise such powers and functions in a manner that is completely above board and must ensure that his conduct is such that cannot be made subject of criticism on grounds of impropriety or indiscretion. In the absence

of such a commitment, the entire moral edifice on which the office of Lokayukta is grounded would fall and statutory purposes(s) will not be satisfied.

13. That appointment to an office does not create a vested right in the person so appointed to continue to exercise powers and functions associated with that office. If such a statutory functionary fails to uphold the standards expected of his office, especially in the public domain operating in public interest, the spirit of constitutionalism requires that such a functionary should not be allowed to continue to tarnish the dignity of his office.

14. That the doctrine of institutional autonomy and institutional integrity has been well-recognized by this Hon'ble Court in a number of cases, including *Vineet Narain and ors v Union of India and ors*, (1998) 1 SCC 226, which held, *inter alia*:

Para 55: "It is trite that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a *prima facie* case is made out should be prosecuted

expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law."

15. That this Hon'ble Court cited the celebrated 'Nolan Principles' (para 54, *Vineet Narain's case*) for guidance on the standard of conduct expected of those in public office:

"1. Selflessness

Holders of public office should act solely in terms of the public interest.

2. Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

3. Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

4. Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

5. Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

6. Honesty

Holders of public office should be truthful.

7. Leadership

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Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs."

16. That in the present case, Respondent No 1 has failed to abide by these high standards which are not only expected of him from a moral and ethical standpoint but are also binding legally in view of the doctrine of constitutionalism developed by this Hon'ble Court. Each instance on its own need not amount to gross indiscretion; however, the facts above clearly demonstrate a pattern of behaviour where unreasonable and unjustified demands are made by Respondent No 1 whenever his demands are not met. This is completely contrary to the ethos of a Lokayukta, which is an apolitical post and ought not to be used for any kind of bargaining, either in the private or public sphere.
17. That in particular, regarding the functioning of Respondent No 1 from Delhi 'online', the fact that a record of documentary approval was sought to be created without the actual knowledge of the persons concerned casts a deep shadow of doubt on the scrupulousness of Respondent No 1 and the kind of influence he exerts on the other government officials in the chain of command.
18. That even otherwise, the other instances which reflect demands for preferential or special treatment in various

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circumstances are contrary to the spirit of equality and the rule of law. Such arbitrary and capricious actions deny the right to a fair, just, and accountable Lokayukta to the residents of Nagaland in contravention of Article 14 of the Constitution of India. It is noteworthy that the Constitution accords special priority to the rights of members of tribal communities, and repeated humiliation of such communities, including their officers, has led to an extraordinary situation which warrants interference by this Hon'ble Court.

19. That the conduct of Respondent No 1 arrogating all powers to himself, repeatedly reiterating that the functions of the Upa-Lokayukta are subordinate and inferior, and in fact reducing the functions of the Upa-Lokayukta to that of an administrative officer, amounts to institutional impropriety and abuse of statutory powers.
20. That the conduct of Respondent No 1 seeking undue favours accompanied by constant reminders is not befitting the status of a retired Chief Justice of a High Court. This raises questions about the suitability of Respondent No 1 to investigate and adjudicate upon 'complaints' as per the Act, being complaints in respect of offences under the Prevention of Corruption Act, 1988.
21. That Respondent No 1, being the chairperson of an ombudsman constituted to uphold due process of law,

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violated procedural rules and thereby the institutional integrity of his office when he illegally procured the "approval on behalf of the Chief Secretary" to function from Delhi as communicated through letter dated 6 Jun 2019.

22. That the cumulative conduct of Respondent No 1, being the corruption watchdog of the State, amounts to abuse of office in order to avail more comforts than lawfully allocated to an officer of his status and designation. At the expense of reiteration, Respondent No 1 consistently sought additional attendant staff, exemptions from frisking, CISF officers as personal attendants at the airports during travel, 'Y Plus' security category in order to place him in the list of exempted category of VIPs for frisking at airports, former bungalow of the Chief Minister. He also sought to direct the Chief Secretary's office to personally ensure the quality of the furniture purchased for this office and that his personal staff be treated as the staff at office of Lokayukta.
23. That Respondent No 1 seeks undue favours from subordinate staff, who are helpless as they are employed at his pleasure, and even makes undignifying demands of government functionaries such as his direction to the IGPD to purchase shoes for him. On one hand, Respondent No 1 claims parity with a sitting Chief Justice

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of High Court, and on the other hand, he has often stooped to unacceptable behaviour.


24. That seeking appointment of additional Upa-Lokayuktas upon rejection of his demand to function from Delhi on one hand and limiting the Upa-Lokayukta's powers on the other, is nothing but an attempt to single-handedly exert control over the manner in which all new cases are dealt with.
25. That almost all demands of Respondent No 1 exhibit impropriety, abuse of office, abuse of power, arbitrariness, and self-centrism. Respondent No 1 appears to be dissatisfied and frustrated with the Petitioner's consistent refusal to entertain his unreasonable demands and as a result, he has repeatedly admonished the Petitioner's officials without genuine cause.

PRAYER

26. In light of the aforesaid facts and circumstances, it is humbly prayed that this Hon'ble Court may be pleased to:
- a. issue a writ, order, or direction in the nature of *mandamus* or otherwise to Respondent No 1 to assign / transfer all pending cases before him to the Upa-Lokayukta(s) for the State of Nagaland;

- b. issue a writ, order, or direction in the nature of prohibition or otherwise to Respondent No 1 to cease exercise of all his powers and functions as Nagaland Lokayukta / Chairperson, Lokayukta for the State of Nagaland (as per the Nagaland Lokayukta Act, 2017 (the "Act"));
- c. pass appropriate order(s) or direction(s) in exercise of its powers under Article 142 to ensure that the institutional integrity of the post of Nagaland Lokayukta and the spirit of the Act are preserved;
- d. issue appropriate order(s) or direction(s) in exercise of its powers under Article 142 to ensure that (a) the institutional integrity of the post of Nagaland Lokayukta and the spirit of the Act are preserved, and (b) the office of Nagaland Lokayukta is occupied by a fit, proper, and competent person as per the Act; and
- e. pass any other orders it deems fit in the interests of justice.

17 MARCH 2020
NEW DELHI



IN THE SUPREME COURT OF INDIA AT NEW DELHI
EXTRAORDINARY CIVIL ORIGINAL JURISDICTION

WP (C) NO OF 2020

IN THE MATTER OF:
STATE OF NAGALAND

...PETITIONER

VERSUS

CHAIRPERSON, LOKAYUKTA
FOR THE STATE OF NAGALAND
AND ~~ANR OTHER~~

...RESPONDENTS

AFFIDAVIT

I, Jyoti Kailash, son of Mr. Shri R.N. Srivastava, aged around 53 years, having my office at 29 Aurangzeb Road, New Delhi – 110011, do hereby solemnly affirm as follows:

1. That I am the Additional Chief Secretary and Resident Commissioner for the State of Nagaland, and I am conversant with the facts of the case based on the records maintained. Hence, I am competent to swear this affidavit on behalf of the Petitioner.
2. That the accompanying petition has been drafted as per my instructions. Its contents have been explained to me and I have understood the same. The contents of the petition are true and correct to my knowledge based on the records of the case, and nothing material has been concealed therefrom. The annexures accompanying the petition are true copies/ true typed copies of their respective originals.

[Handwritten Signature]

DEPONENT



VERIFICATION

Verified at New Delhi on this the 16 day of March 2020, that the contents of the above affidavit are true and correct to my knowledge based on the records of the case and the information received. Nothing material has been concealed therefrom.

ATTESTED
[Signature]
NOTARY PUBLIC
R.K. SUPREME COURT

IDENTIFIED
[Signature]
DEPONENT

Article 32 in The Constitution Of India 1949

32. Remedies for enforcement of rights conferred by this Part

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part

(3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution