

15 -ാം കേരള നിയമസഭ

4 -ാം സമ്മേളനം

നക്ഷത്ര ചിഹ്നം ഇല്ലാത്ത ചോദ്യം നം. 2085

16-03-2022 - ൽ മറുപടിയ്ക്ക്

ലോകായുക്ത നിയമ ഭേദഗതി

ചോദ്യം		ഉത്തരം	
<p align="center">ശ്രീ. ടി. വി. ഇബ്രാഹിം , പ്രൊഫ. ആബിദ് ഹുസൈൻ തങ്ങൾ , ശ്രീ. കെ. പി. എ. മജീദ്</p>		<p align="center">null (മുഖ്യമന്ത്രി)</p>	
(എ)	സംസ്ഥാനത്ത് ലോകായുക്ത നിയമം ഭേദഗതി ചെയ്തുകൊണ്ട് ഓർഡിനൻസ് പുറപ്പെടുവിച്ചിട്ടുണ്ടോ;	(എ)	ഉണ്ട്.
(ബി)	1999-ലെ നിയമം ഭരണഘടനാ വിരുദ്ധമാണെന്ന് നിലവിലെ സർക്കാരിന് തോന്നാനിടയായ സാഹചര്യം വ്യക്തമാക്കുമോ; ഇക്കാര്യത്തിൽ സർക്കാരിന് നിയമോപദേശം ലഭിച്ചിട്ടുണ്ടോ; വിശദാംശം നൽകുമോ;	(ബി)	ബഹു. കേരള ലോകായുക്തയുടെ 09.04.2021 തീയതിയിലെ C.No. 57/2019 B നമ്പർ കേസിലെ റിപ്പോർട്ടിന്മേൽ നിയമോപദേശം തേടിയതിനെ തുടർന്ന് അഡ്വക്കേറ്റ് ജനറൽ നിയമോപദേശം നൽകിയിരുന്നു. പകർപ്പ് ഉള്ളടക്കം ചെയ്യുന്നു.
(സി)	പ്രസ്തുത നിയമ ഭേദഗതി സംബന്ധിച്ച് ഭരണ കക്ഷികൾ വിയോജിപ്പ് അറിയിച്ചിട്ടുണ്ടോയെന്ന് വ്യക്തമാക്കുമോ?	(സി)	ഇല്ല.

സെക്ഷൻ ഓഫീസർ



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No. SS - 08/2021/AG

13th April, 2021

Sri. Pinarayi Vijayan
Hon'ble Chief Minister
Government of Kerala
Thiruvananthapuram

Sir,

Sub : Report dated 09.04.2021 in C.No. 57/2019 B of the Kerala
Lok Ayukta - Legal Opinion - forwarding of - reg.

Ref : Letter No. 235/2021/CM dated 12.04.2021.

*See
13/4/21.*

I am in receipt of the above referred letter. I have perused the Report dated 09.04.2021 of the Kerala Lok Ayukta, purportedly in terms of Section 14 of the Kerala Lok Ayukta Act, 1999 (hereinafter referred to as "*the Act*") and connected files.

Section 14 of the Act provides that where the Lok Ayukta or Upa Lok Ayukta is satisfied that the complaint involving an allegation against the public servant is substantiated and that the public servant concerned should not continue to hold the post held by him, the Lok Ayukta or Upa Lok Ayukta, as the case may be, shall make a declaration to that effect in the Report under Section 12(3) of the Act. It is also further provided in Section 14 that where the competent

authority is the Governor, the Government of Kerala or the Chief Minister, he or it shall accept the declaration and that in other cases, the competent authority concerned shall send a copy of such report to the Government, which shall accept the declaration.

An anomalous situation may arise if a declaration is made against a Member of the Council of Ministers of the State by the Lok Ayukta in terms of Section 14 read with 12(3) of the Act. Article 163 of the Constitution provides for a Council of Ministers to aid and advice the Governor, with the Chief Minister as its head. Article 164 provides that Chief Minister shall be appointed by the Governor and other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor. The pleasure of the Governor depends on the advice of the Chief Minister. When the Constitution mandates, by virtue of Article 163 and 164, that a Minister shall hold office during the pleasure of the Governor, which pleasure depends upon the advice of the Chief Minister, Section 14 of the Act, on the contrary, provides that a Minister shall vacate office if directed by the Lok Ayukta.

A statutory provision cannot override a constitutional provision. Section 14 of the Act, in so far as its application to a Member of the Council of Ministers of the State is concerned, is apparently in conflict with Articles 163 and 164 of the Constitution. Therefore, in my view, Section 14 of the Act requires appropriate amendments. Many of the

similar Acts pertaining to Lok Ayukta in other States do not have such a mandatory provision of there being consequential vacation of office on such declaration by the Lok Ayukta. On the other hand, such Acts provide for discretion on the part of the competent authority to accept or reject such a report. Certain Acts merely provide that it shall be lawful for the competent authority to remove the person against whom the report has been made by the Lok Ayukta, without any further enquiry.

Considering the facts of the case at hand, the report in question in my opinion, is not in accordance with the provisions of the Act regarding preliminary enquiry and investigation. As per Section 9 of the Act, the Lok Ayukta may conduct an investigation into a complaint after making preliminary enquiry. It is trite and settled law that preliminary enquiry may not be mandatory. However, irrespective of whether there is preliminary enquiry or not, there should be mandatory compliance of the provisions under Section 9(3) of the Act.

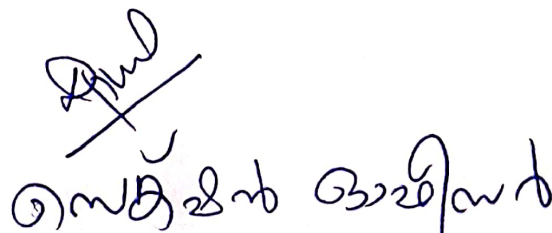
On going through the report in question and the sequence of dates and events in relation to the case, it is discernible that the Lok Ayukta conducted a preliminary enquiry; that the complaint was finally admitted on 26.03.2021; that final arguments were also heard on that day and on 30.03.2021; and that the report was finalised on 09.04.2021. Therefore, it can be safely concluded that there was no proper investigation as mandated under Section 9 of the Act.

A report under Section 12 of the Act and declaration under Section 14 of the Act has to be mandatorily preceded by an investigation. It is clear from the documents made available to me today that no investigation has been conducted by the Lok Ayukta. As per Letter No. 57/KLA/B/2019 dated 12.04.2021, the Deputy Registrar of the Lok Ayukta has intimated your goodself that the Lok Ayukta and Upa Lok Ayukta admitted the complaint for investigation and directed the Registry therein to comply with Section 9(3)(a) of the Act, by forwarding a copy of the complaint to the competent authority. As per Section 9(3) of the Act, it is on deciding to conduct investigation that the Lok Ayukta has to provide a copy of the complaint to the competent authority. However, in the case at hand, the Lok Ayukta has communicated the complaint, as required under Section 9(3)(a) of the Act to the office of your goodself on 12.04.2021 after the report dated 09.04.2021. This itself proves that there was no proper investigation as mandated under the Act. Therefore, on this short ground itself, the report is liable to be challenged before the Hon'ble High Court.

Yours faithfully



C.P.SUDHAKARA PRASAD
ADVOCATE-GENERAL



എ.പി. സുധാകര പ്രസാദ്