IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-CW-81-2020

Sunil Garg,
S/o. late Lakshmikant Garg,
Aged 59 years, Indian,
Resident of 2/2, Court Lane,
Civil Lines, New Delhi, 110009. ... Petitioner.

Versus

1. Munnalal Halwai,
S/o. Ramchandra Halwai,
Aged 46 years, Indian,
R/o FF-Complex, 5th Floor,
Above Bank of Baroda,
Vasco da Gama, Goa.
State of Goa & Ors.

2. The State of Goa,
Through Secretary (Home),
Secretariat, Porvorim,
Bardez, Goa.

3. Institution of Goa Lokayukta,
Office at 1st Floor, Annexe Bldg.,
Old G.M.C., Ribandar, Tiswadi, Goa. ... Respondents

Shri Jatin Sehgal, Advocate for the Petitioner.
Shri N. Kamat, Advocate for the First Respondent.
Shri P. Faldessai, Additional Government Advocate for the Second Respondent.
Shri Padiyar, Advocate for the Third Respondent.

Coram:- DAMA SESHADRI NAIDU, J.
Date:- 3rd September 2020

JUDGMENT

Introduction:

Before a quasi-judicial authority that self-regulates its procedure, an interlocutory application comes to be considered. The proceedings have been pending for a few years, though the process is summary. The all-pervasive pandemic preventing any physical courts and proximate hearing, the Tribunal wanted the counsel, from Delhi, to file his written submissions. But he insists on oral arguments through a video-link. In the alternative, he wants the matter adjourned until the lockdown is lifted. With the Tribunal's refusal, the petitioner has filed this writ petition.

2. The Question: Before a quasi-judicial Tribunal, with no particular procedural norms, is oral hearing an inviolable facet of natural justice and fair hearing?

Procedure: A Friend or a Foe?

3. Indian legal fraternity's love affair with the procedural codes is legendary; it has transcended the temporal bounds and resisted, to a great extent, the temptation for reform. Though we have borrowed the procedural codes from the British, we can teach them a lesson or two on how inviolable the procedure is, even if the substantive law suffers. In our country, a lawyer's forensic finesse gets measured by his command of the procedural codes. And in most cases—though not in this one—one or the other party engages a counsel for his skills to drag the proceedings. There is a premium in prolonging any judicial proceeding; sometimes the procedural panoply—with all its rigours and rigmaroles—gives the litigant what he could not have, under the substantive law, bargained for. A case in point is *Bharat Petroleum Corporation Ltd., v. Champalal Vithuram Jajoo*[1].

12020 SCC OnLine Bom 792

4. Who else can I quote than the venerable Vivekananda on how we fall into these endless procedural pits and make a virtue of our failure to climb over? He says, "[b]ut there is yet time to change our ways. Give up all those old discussions, old fights about things which are meaningless, which are nonsensical in their very nature. . . grown-up men by hundreds have been discussing for years whether we should drink a glass of water with the right hand or the left, whether the hand should be washed three times or four times, whether we should gargle five or six times. What can you expect from men who pass their lives in discussing such momentous questions as these and writing most learned philosophies on them!" For Vivekananda, it is a "sure sign of softening of the brain when the mind cannot grasp the higher problems of life; all originality is lost, the mind has lost all its strength, its activity, and its power of thought, and just tries to go round and round the smallest curve it can find."[2] Sans religious overtones, let us apply that aphorism to the judicial way of life. It fits. The procedure is our perennial curve. It is time we grappled with and grasped the higher problems of law. Let us preserve the judicial strength, activity, and vigour to do justice—the eventual jurisprudential destiny. The procedure is only a path, not the destination; only a means, not the end.

5. Indeed, judges have been entrusted with the discretion, and the suitor should trust them in their exercising it.

Facts:

6. Respondent Munnalal Halwai complained against petitioner Sunil Garg, a top-ranked police officer, then, working in the State of Goa. He complained to the Institution of Lokayukta, and that was in August 2016.

2The Complete Works of Swami Vivekananda, Chapter 3.4.7, Vol.3, (kindle book, Loc 19509 of 68358)

Soon thereafter, Munnalal filed a private complaint under Section 200, read with Section 156(3) of the Code of Criminal Procedure ("Code"), before the District and Sessions Court, North Goa, at Panaji. He wanted an FIR registered against Sunil. The allegations concern corruption, but we need not go into them, for this Writ Petition needs to be disposed of on a procedural issue unconnected with the allegations.

7. Again, in August 2016, Munnalal invoked Section 11 of the Goa Lokayukta Act 2011 ("the Lokayukta Act") and complained against Sunil. This complaint contained no reference to Munnalal's approach to Sessions Court earlier. So in November 2016, Sunil applied under Section 27 of the Lokayukta Act to have the proceedings before the Lokayukta stayed. It was in the light of the pending criminal complaint. Meanwhile as Sunil had been posted at New Delhi, he engaged a counsel from Delhi and continued to prosecute the case before the Lokayukta, Goa. Indeed, the Lokayukta adjourned the matter from time to time until 2018.

8. In January 2018, the Additional Session Judge, North Goa at Panaji, directed the police under Section 156(3) of the Code to register a crime against Sunil. Aggrieved, Sunil filed WP No.13 of 2018. This Court, on 27 June 2018, allowed that Writ Petition. Against this Court's Order, Munnalal filed Special Leave to Appeal (Criminal) No. 10211/2018. The SLP is pending but with no stay against the High Court's Order. It seems the Supreme Court has tagged Munnalal's SLP with another SLP dealing with a similar question: Criminal Appeal No. 457 of 2018.

9. Until April 2020, Lokayukta, as Sunil stresses, went on adjourning the matter. On 20 April 2020, because of the nation-wide lockdown, Sunil's counsel could not come down to Goa for the hearing. In the second week of June this year, the Lokayukta's Registrar called Sunil's advocate on record and informed her about the next date of hearing: 18 June 2020. She is said to have told the Registrar about the arguing counsel's difficulty to attend the hearing because of COVID-19.

10. On 23 June, Sunil's counsel received an e-mail of Lokayukta's proceedings, dt.18.06.2020. Then, she came to know that the Lokayukta had dispensed with the oral arguments in Sunil's pending application under Section 27 of the Lokayukta Act. It has required Sunil's counsel to file written submissions, instead. The proposed hearing through a written submission, it seems, include an impleadment application filed by one Baleshwar Sharma.

11. Then, in the first week of July, Sunil applied, under Rule 7 of the Goa Lokayukta Rules 2012, for having the Order, dt.18.06.2020, reviewed. She sent that application to the Lokayukta through e-mail. She has pleaded in that review application that the matter involves "complex facts and circumstances and questions of law which require a detailed hearing and arguments". No orders ought to be passed without the Lokayukta's allowing Sunil's counsel to "address oral arguments". But, through its Order, dt.7.7.2020, Lokayukta refused to review its Order. Now, that Order is challenged in this writ petition.

12. In fact, through the impugned Order, dated 07.07.2020, the Lokayukta directed the parties to present oral arguments before it on 15.07.2020 or to file written submissions.

Submissions:

Petitioner:

13. Shri Jatin Sehgal, the learned counsel for the petitioner, has insisted that without an opportunity for the counsel to articulate the case orally, Sunil will suffer substantial prejudice. He cites many governmental and judicial instructions across the country on the COVID restrictions and remedial steps. I summarise the arguments:

(a) All along, from 2016, the Lokayukta allowed the parties' personal participation in the proceedings, besides permitting their respective counsel to address the Tribunal, always, orally. That is, Lokayukta has already decided its procedure under Section 13. Now, it has arbitrarily changed the procedure, midstream.

(b) Given the global pandemic, neither Sunil nor his counsel could be present before the Lokayukta.

(c) As the facts and the issues involved in the case are complex, the Lokayukta ought to allow Sunil's counsel to address it orally, and that oral hearing should take place once the lockdown is eased or the Covid abated.

(d) Given the statutory mandate in Sections 14 (2) and (3), 15 (2) (3) and (7), 16, 16A, and 17, the Lokayukta's powers are wide and have far-reaching consequences. The orders may result in a public functionary's vacating the office or facing prosecution. Any hearing "with implications of such severe nature cannot be substituted with written submissions".

(e) The change in the procedure under Section 13 (3) must accord with Section 32 of the Lokayukta Act.

(f) Lokayukta does not suffer from any infrastructural inadequacies; it has, for instance, an e-mail facility, too.

(g) There ought to be, at least, virtual hearing to facilitate oral arguments, and for that Lokayukta is well equipped.

Respondents:

Third Respondent:

14. Shri Padiyar, the learned counsel representing Lokayukta, has fairly submitted that Lokayukta has no desire to defend its orders as if it were an adversary. He has submitted that it has been endeavouring to dispose of long-pending cases, for the statute contemplates expeditious disposal. Shri Padiyar reminds me that the petitioner cannot treat the proceedings before Lokayukta as if they were suit proceedings in a civil court. The proceedings, according to him, are summary. In this context, he has relied on a few precedents. I will refer to them by and by.

First Respondent:

15. Shri N. Kamat, the learned counsel for Munnalal, has submitted that the petitioner has been dragging the proceedings for no reason. What Lokayukta intend to decide, he stresses, is only an interlocutory application. In this context, he too reminds me that the Lokayukta Act has given ample powers to Lokayukta to regulate its own procedure. Therefore, he urges the Court to dismiss the Writ Petition, which, according to him, is an abuse of process.

16. Heard Shri Jatin Sehgal, the learned counsel for the petitioner; Shri N. Kamat, the learned counsel for the first respondent; and Shri S. D. Padiyar, the learned counsel for the third respondent.

Discussion:

17. First, let us set bounds for our discussion. We are not, here, deciding what procedural parameters should apply to a quasi-judicial, and a *sui generis*, institution like Lokayukta. The Statute has taken care of that: it can regulate its procedure, unburdened by the procedural Codes. Before us, what has been questioned is not the procedure the Lokayukta should adopt in its entire dispensation or in the final phase of proceedings under Section 13 of the Lokayukta Act. Instead, what has been questioned is the procedure it should adopt to dispose of an interlocutory application. That application concerns the maintainability of the proceedings in the wake of a judicial verdict said to be on the same issue, as mandated under Section 27 of the Act. Exceptions apart, I reckon such adjudication as the one under Section 27 is a question of law.

18. So we will confine our discussion to that point alone.

19. Earlier, recently, this Court, in *Xavier Fernandes v. State of Goa*[3], has discussed the Lokayukta's procedural nuances. To lighten the decisional burden, I will draw some material form that judgment. It is only to adumbrate the procedure, devoid of details. In my discussion, wherever I refer to Lokayukta, it includes Upa-Lokayukta, too, unless I specify otherwise.

Statutory Provisions on Procedure:

20. Goa Lokayukta Act provides for "the establishment of the

3 Disposed of on 17 August 2020, in LD-VC-CW-91-2020

Institution of Lokayukta to inquire into grievances and allegations against public functionaries in the State of Goa". Section 9 of this Act enumerates the matters the Lokayukta or the Upa-Lokayukta could investigate. And Section 10 specifies the matters that fall beyond the Institution's investigative purview. While Section 16 refers to the Institution's investigation report and Section 16A deals with the fallout to the report under Section 16, Sections 11 to 15 are essentially procedural.

21. So let us focus on Sections 11 to 15. Section 11 contains "provisions relating to complaints". Section 12, next, contains a "provision for holding preliminary inquiry". Under sub-section (1), the Lokayukta sets out to investigate under three circumstances: (1) On a Government's reference under Section 9(2); (2) on a complaint, under Section 11, by any person other than a public functionary; and (3) *suo motu*, on its own. As Section 12 deals with the preliminary inquiry, first, it will ascertain whether there exists a reasonable ground for it to investigate the allegation. That is, it may refuse to investigate if (a) the complaint is frivolous or vexatious or mala fide, (b) there are not sufficient grounds for it to proceed, or (c) the complainant has more efficacious remedies available. The procedure the Lokayukta should adopt, as Section 12 (2) mandates, is "such as the Lokayukta or Upa-Lokayukta deems appropriate in the circumstances of the case". If it deems necessary, Lokayukta can "call for the comments of the public functionary concerned". This calling for comments at the preliminary stage, I must note, is only discretionary or optional.

22. Section 13 prescribes the procedure for a detailed investigation. After the preliminary inquiry under section 12, if the Lokayukta finds reasonable grounds for a detailed investigation, it "shall forward a copy of the complaint, along with its enclosures to the public functionary and the

competent authority concerned". Then, it indulges in a detailed investigation. Only during this detailed investigation should the Lokayukta allow the public functionary concerned to offer his comments on the complaint. Indeed, as subsection (3) mandates, "the procedure for conducting any such investigation shall be such as the Lokayukta … considers appropriate in the circumstances of the case". That is, the Institution has all the powers to regulate its own procedure. Of course, both the public functionary and the complainant, if any, may participate pro se or through a counsel. And in every detailed investigation, the Government must be a party, with a right to be represented by a counsel.

23. Besides, the Lokayukta, too, as Section 13 (6) allows, can have the assistance of a counsel. It may, at any stage, allow 'any witness' or 'any other person' to participate in the proceedings as it thinks fit. As to the search, seizure, or warrants, the Cr PC will apply. During the investigation, preliminary or detailed, the Lokayukta shall have all the powers as if it were trying a suit under the Code of Civil Procedure. Of course, this deeming provision applies to the procedural steps enumerated in Section 15 of the Act.

24. Section 14 of the Lokayukta Act concerns the mechanism of issuing search warrants, seizure of documents or property, and so on. And Section 15 deals with 'evidence'. While investigating the allegations, even during the preliminary inquiry, the Lokayukta may require any public functionary or any other person to furnish any information or produce any document as it requires. For this purpose, the Lokayukta will have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908. Sub-section (7) sets out Lokayukta's powers as are available under the Indian Penal Code and the Criminal Procedure Code.

25. If Lokayukta finds that the allegations made against a public functionary have not been proved or remained unsubstantiated, that will deter no prosecution on the same or similar allegations. So mandates Section 23. Nor does any court of law stand denuded of its powers of adjudication. That is, quasi-judicial findings will not deter judicial fora from adjudicating the issues that come before them. Then, Section 26 of the Lokayukta Act speaks of "bar to inquiries". If a complaint has been presented to Lokayukta under Section 11 of the Act, there shall be no formal or open inquiry, at the Government's instance, into any allegations against the public functionary on the same count. But nothing affects the right or power of any authority under the Code of Criminal Procedure or under any other extant law. We need not elaborate on the rest of the provision.

26. Now let us focus on Section 27, the pivotal provision for Sunil. According to this provision, the pendency of any civil or criminal case in the High Court or any court subordinate to it regarding any allegation or grievance shall not bar the Lokayukta from scrutinising, investigating, or inquiring into that allegation. But it shall "refrain from conducting further proceedings under this Act till the final disposal of such pending civil or criminal case in the High Court or any court subordinate" to it. And all further proceedings under this Act shall be subject to any order, judgement, directions, and so on that may be passed by the High Court or the subordinate court.

27. Section 31 confers rule-making power on the State. And Section 32 deals with the Lokayukta's regulation-making power. With the Government's prior approval, it may make regulations, among others, prescribing "the procedure which may be followed by [it] for conducting proceedings including enquiries and investigation". In this context, this

Court has held in *Xavier Fernandes* that Lokayukta, evidently, has not been shackled by the procedural hassles prescribed elsewhere. It is a tribunal to trounce graft; efficacy and expediency take precedence over procedural rigmarole. It regulates its own procedure, and that procedure must conform to the principles of natural justice. As the adjudicatory aphorism asserts; justice, equity, and good conscience guide its procedure.

28. In the context of Section 32 of the Lokayukta Act, Shri Sehgal argues that the Lokayukta has framed no Regulations under that provision. So it must adhere to the procedure it invoked at the beginning until it disposes of the dispute.

To argue which issue, does the petitioner want to advance oral arguments before the Lokayukta?

29. Here, Munnalal first approached the Criminal Court and invoked Section 156(3) of Cr PC., against Sunil. Then, Sunil approached this Court and had those proceedings quashed for want of sanction under Section 193 Cr PC. Against the High Court's judgment, Munnalal, as we have already noted, has knocked the Supreme Court's doors.

30. In this context, Sunil applied to Lokayukta under Section 27 of the Lokayukta Act to bar or stay the proceedings. According to him, Lokayukta ought to be guided by the High Court's findings in those criminal proceedings. In the alternative, he also maintains that the matter is sub judice before the Supreme Court. It is not in my remit to discuss that issue.

31. Suffice to note that after initial adjournments, now the Lokayukta wanted to hear Sunil's application under Section 27 of the Lokayukta Act.

Issues in Perspective:

(i) Once the Lokayukta adopts a procedure in a case, should that procedure remain unchanged throughout?

(ii) Can Lokayukta not regulate its own procedure without its framing Regulations under Section 32 of the Lokayukta Act?

(iii) Are the facts and issues involved in the case are so complex that the Lokayukta ought to allow the petitioner to advance oral arguments?

(iv) Can the Lokayukta dispense with the petitioner's 'right to oral hearing' when its findings may have far-reaching consequences, including the public functionary's vacating the office or facing prosecution?

Precedential Position on Procedure and Oral Hearing:

32. To unravel the above questions, let us first consider the decisions the parties on either side have relied on.

Bhumika Cleantech Services & Viswasrao Chudaman Patil:

33. This Court in *Bhumika Cleantech Services Pvt. Ltd. v. Lokayukta*[4] has held that the Lokayukta, while exercising powers under the statute, acts as a quasi-judicial authority. Yet, its functions, according to this Court, are investigative. To hold thus, it has followed this Court's Division Bench decision in *Dr Viswasrao Chudaman Patil v. Lok Ayukta, State of Maharashtra*[5]. The Division Bench has elaborated on the statutory objective. That objective is to eradicate the evil of corruption and mal-administration. So it has advocated a liberal interpretation of the Act and has held that the Lokayukta has jurisdiction to issue an interim order, "even in the nature of a recommendation as it would render his final recommendation a barren success." According to *Viswasrao Chudaman Patil*, the High Court should entertain no challenge that throttles the investigation itself. Incidentally, *Bhumika Cleantech Services* echoes the Delhi High Court's *Sunita Bhardwaj v.*

4(2017) 6 Mah LJ 799

5AIR 1985 Bom 136

Smt. Sheila Dixit[6].

Nagendra Nath Bora:

34. In *Nagendra Nath Bora v. Commissioner of Hills Division and Appeals*[7], a Constitution Bench of the Supreme Court holds that "the rules of natural justice vary with the varying constitutions of statutory bodies" and the rules prescribed by the Act under which they function. The question whether any rules of natural justice had been contravened should be decided not under any preconceived notions, but in the light of the statutory rules and provisions. Where no such rules which could be said to have been contravened by a tribunal are brought to the Court's notice, it is no ground for interference either under Arts. 226 or 227 simply because the tribunal had viewed the matter in a light which is not acceptable to the Court.

Rang Nath Mishra:

35. In *Rang Nath Mishra v. State of UP*[8], the appellant challenged a Lokayukta's report; it wants to investigate the allegations against the appellant. He assails the report on the grounds that the complaint did not contain the party's affidavit as needed, nor has the Lokayukta's decision on preliminary inquiry been communicated to him. Besides, the appellant alleged that the Lokayukta submitted the report ignoring his request to produce documents in defence.

36. To repel the above contentions, the Supreme Court in *Rang Nath Mishra* notes that Section 10 (3) of the Act leaves the Lokayukta with "the discretion to adopt such procedure as may be considered appropriate in the given facts of the case". On the principle of prejudice too, the Court has

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6(2013) 203 DLT 743 (DB)

7AIR 1958 SC 398

8AIR 2015 SC 3381

found in the negative.

Tulsiram Patel:

37. In *Union of India v. Tulsiram Patel*[9], another Constitution Bench of the Supreme Court has interpreted Arts. 309, 310, and 311 of the Constitution and, in particular, clause (2) of Art. 311. This clause (2) proscribes the authorities from dismissing or removing an employee or reducing his rank without an inquiry and a reasonable opportunity of hearing about the charges the employee has faced.

38. As to Clause (2) of Article 311, *Tulsiram Patel* holds that the provision gives a constitutional mandate to the principles of natural justice and the *audi alteram partem*. That said, it also enumerates under what circumstances the safeguards apply: dismissal, removal, or reduction in rank. To that extent, the pleasure doctrine under Article 310 (l) is abridged. But this safeguard provided for a government servant by clause (2) of Article 311 is taken away when the second proviso to that clause applies. That is, the second proviso excludes these instances from the protective cover of Article 311 (2): (a) when the dismissal, removal, or reduction in rank is due to the employee's conviction on a criminal charge; or (b) when an inquiry is not reasonably practicable, but this exclusion must be reasoned; or (c) when the President or the Governor concludes that such an inquiry will affect the security interest of the State.

39. In this context, *Tulsiram Patel* observes that the principles of natural justice are not the creation of Article 14. Article 14 is not their begetter but their Constitutional guardian. It goes onto observe that "the process of a fair hearing need not, however, conform to the judicial process in a court of law". It is because judicial adjudication involves many technical

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9AIR 1985 SC 1416

rules of procedure and evidence. But these rules of procedure and evidence are unnecessary for a fair hearing within the meaning of *audi alteram partem* rule in a quasi-judicial or administrative inquiry.

P. K. Roy:

40. According to *Union of India v. P. K. Roy*[10], the extent and application of the doctrine of natural justice cannot be formulaic. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, upon the scheme and policy of the statute, and upon other relevant circumstances disclosed in the particular case.

S. Kapur Singh:

41. In *S. Kapur Singh v. Union of India*[11], a Constitution Bench delineates on what is a reasonable opportunity. According to it, whether the opportunity afforded to a public servant in a particular case is reasonable must depend upon the circumstances of that case. In the context of a disciplinary inquiry under Article 311 of the Constitution, *Kapur Singh* concludes that an opportunity of oral presentation is not a necessary postulate for showing cause within the meaning of Art, 311 of the Constitution. So the Court rejects the plea that he was deprived of the constitutional protection of that Article because he was not given an oral hearing.

Janekere C. Krishna:

42. The Supreme Court, per Madan B. Lokur J, in *Justice Chandrashekaraiah (Retd.) v. Janekere C. Krishna*[12], has interpreted the

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10AIR 1968 SC 850

11AIR 1960 SC 493

12AIR 2013 SC 726

Karnataka Lokayukta Act and held that the Lokayukta discharges quasi-judicial functions when it investigates under the Act. Yet, notwithstanding his status, he is not placed on the pedestal of a judicial authority rendering a binding decision; he is placed somewhere between an investigator and a judicial authority, having the elements of both. Thus, he is much more "judicial" than an investigator or an inquisitorial authority, though. Indeed, Lokayukta, the Upa Lokayukta included, is a *sui generis* quasi-judicial authority.

43. Sub-section (2) of Section 11 of the Act also states that for any such investigation, including the preliminary inquiry, Lokayukta shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in the matter of summoning and enforcing the attendance of any person and examining him on oath. Further, they have also the power for requiring the discovery and production of any document, receiving evidence on affidavits,

Mohd. Arif:

44. *Mohd. Arif v. Supreme Court of India*[13] is a constitutional Bench decision. It concerns the review by convicts on death row. Order XL, Rule 3 of the Supreme Court Rules 1966 permits review. The question is whether the hearing of Review Petitions in death sentence cases should be only by circulation; should not it not be in open Court? Should the Supreme Court Rule be declared unconstitutional? The verdict is 4:1. The Majority (per R. F. Nariman J) accepts that death sentence cases are a distinct category altogether and opines that "reasonable procedure" would encompass oral hearing of review petitions arising out of death penalties.

45. After copiously quoting from *P. N. Eswara Iyer*, the Majority holds

13(2014) 9 SCC 737

that the oral hearing in death sentence cases becomes too precious to be parted with. Then, it goes onto reiterate that "when it comes to death penalty cases, [the Court feels] that the power of the spoken word has to be given yet another opportunity even if the ultimate success rate is minimal." Both by distinguishing and by drawing succour from *P. N. Eswara Iyer*, the Majority holds that the fundamental right to life and the irreversibility of a death sentence mandate that oral hearing be given at the review stage in death sentence cases.

46. Let us not conflate the mundane with the momentous, the profound with the petty. Here, this case deals with the problem of an interlocutory hearing; *Mohd. Arif* deals with a death sentence. An interlocutory application is a 'comma' in the litigious life; the death sentence is a 'full stop' to the very life. A comma is transitional; a full stop is terminal, so to say. We cannot misapply *Mohd. Arif* here.

P. N. Eswara Iyer:

47. *P. N. Eswara Iyer v. The Registrar, Supreme Court of India*[14], too, is a Constitution Bench decision. It considers the Supreme Court's review powers under Article 137 and its interplay with Article 145 of the Constitution, the rule-making power.

48. Krishna Iyer J, in his Lordships inimitable Asiatic linguistic exuberance, paraphrases the problem: Do the scuttling of oral presentation and open hearing subvert the basic creed that public justice shall be rendered from the public seat, not in secret conclave? Does hearing become 'deaf' if oral impressiveness is inhibited by the circulation process? Is audio-visual argumentation common in the halls of court the insignia of judicial justice?

49. *P. N. Eswara Iyer* prefaces its discussion with an observation that

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14AIR 1980 SC 808

secrecy and circulation negate the judicial procedure. Hearing the party affected is too deeply embedded in the consciousness of our constitutional Order. And it agrees that public hearing is of paramount significance; justice, in the Indian Republic, is public. Further accepted is the proposition that "oral advocacy has a non-fungible importance in the forensic process which the most brilliant brief cannot match and the most alert judge cannot go without". But the key question, according to *P. N. Eswara Iyer*, is different: Are written arguments in preference to oral submissions arbitrary, unfair, and unreasonable?

50. The normal rule of the judicial process is oral hearing and its elimination an unusual exception, accepts *P. N. Eswara Iyer*. That said, it also emphasises that the "goal to be attained is maximisation of judicial time and celerity of disposal" of review petitions. India is neither England nor America and our forensic technology must be fashioned by our needs and resources. It tellingly observes that

> the right to be heard is of the essence, but hearing does not mean more than fair opportunity to present one's point on a dispute, followed by a fair consideration thereof by fair-minded Judges. Let us not romanticise this process nor stretch it to snap it. *The presentation can be written or oral, depending on the justice of the situation. Where oral persuasiveness is necessary, it is unfair to exclude it and, therefore, arbitrary too. But where oral presentation is not that essential, its exclusion is not obnoxious.* What is crucial is the guarantee of the application of an instructed, intelligent, impartial and open mind to the points presented.
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> (italics supplied)

51. In fact, *P. N. Eswara Iyer* prefers the blend of both; it leaves the choice to the discerning judge. It wants the "romance with oral hearing" to terminate at some point. It does not want the oral hearing made a "sacred cow" of the judicial process. The mode of "hearing"—whether it should be

oral or written or both, whether it should be full-length or rationed—must depend on myriad factors and future developments.

52. Let us not forget both *Mohd. Arif* and *P. N. Eswara Iyer*, co-equal Constitution Benches grapple with the same problem—review before the Supreme Court and the dispensed-with oral arguments—but under different contexts. *P. N. Eswara Iyer* deals with the review process as a whole, and *Mohd. Arif* with the review in the context of the death penalty. The change in facts changes the adjudicatory focus. The similarity of issues is not a significant factor for a judgment to gain precedential power; the facts determine the fate of every case. And factual familiarity is a must for a decision to be a precedent.

Liberty Oil Mills:

53. In *Liberty Oil Mills v. Union of India*[15], the Supreme Court has held that the procedure may be different in each case and may be determined by the facts, circumstances, and exigencies of each case. The authority may design its own procedure to suit the requirements of an individual case. The procedure must be fair and not so designed as to defeat well-known principles of justice. That is all. According to it, if the procedure is fair, it matters not whether the investigation is preceded, interjected, or succeeded by a show-cause notice.

P. Rajasekhar:

54. A Full Bench of the Andhra Pradesh High Court in *P. Rajasekhar v. State of AP*[16] holds that Lokayukta may have followed certain procedure, which procedure is normal to an enquiry or trial in a Court of law. Even then, it cannot be said that the Lokayukta's investigation amounts to a court's

15(1984) 3 SCC 465

16(1986) 2 ALT 336

adjudication in an enquiry or trial.

Analogous Statutes and Oral Arguments:

55. Before referring to analogous statutes, I may have a word about the primary Codes: CPC and Cr PC. Order XVIII, Rule 3A of CPC permits any party to address oral arguments in a case, besides allowing him to file written arguments concisely with distinct headings. Under Section 314 (1) of Cr PC, too, any party to a proceeding may address concise oral arguments, besides submitting a memorandum to the Court setting forth concisely and under distinct headings, the arguments.

56. Now I refer to a few enactments which allow the respective tribunals to regulate their own procedure and see whether they allow, as a matter of rule, oral argument. To begin with, under Section 22 (2) of the Administrative Tribunals Act, 1985, a Tribunal shall decide every application after hearing such "oral arguments" as may be advanced. Section 24 (1) of the Arbitration and Conciliation Act, 1996, says unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for "oral argument", or whether the proceedings shall be conducted based on documents and other materials. But the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held.

57. Under Section 14 (3) of the Central Administrative Tribunal (Procedure) Rules, 1987, the Tribunal shall have the power to decline an adjournment and also to limit the time for "oral arguments". Section 18 (2) of the Railway Claims Tribunal Act, 1987, the Claims Tribunal shall decide every application expeditiously. And ordinarily every application shall be decided on a perusal of documents, written representations and affidavits and

after hearing such "oral arguments" as may be advanced. Section 60 (2) of the Delhi Rent Act, 1995, requires the Tribunal to decide every application… after hearing such "oral arguments" as may be advanced. Finally, we may refer to the Punjab Rent Act, 1995. Section 53 (2) of that Act allows the Tribunal not to be bound by the procedure laid under CPC. But the Tribunal shall decide every application…after hearing such "oral arguments" as may be advanced".

58. As seen from the above provisions of a few special enactments, wherever oral arguments are permissible, they have been mentioned. They have also, in fact, specified under what circumstances those arguments are permitted. But the Lokayukta Act is silent; it has, indeed, conferred wide discretion on the Lokayukta. Going by the ratio of *Ch. Rama Rao* (discussed below), in the proceedings under Section 12, no notice is needed unless the Lokayukta feels the necessity. And, I reckon, the proceedings have not reached the state of main inquiry under Section 13 of the Act. Even during that final phase, Lokayukta can adopt procedure which it "considers appropriate in the circumstances of the case." It shall have "powers to regulate" the proceedings.

Other Jurisdictions:

The US Supreme Court:

59. We will consider the two major common law countries—the USA and the UK—and see what practice they adopt. They are less populous and have more judges per ten thousand population, the usual standard reckoning. As the US Supreme Court's website reveals, "oral arguments are open to the public." Typically, two cases are heard each day, beginning at 10 a.m. Each case is allotted an hour for arguments. During this time, lawyers for each party have a half hour to make their best legal case to

the Justices. Most of this time, however, is spent answering the Justices' questions. "The Justices tend to view oral arguments not as a forum for the lawyers to rehash the merits of the case as found in their briefs, but for answering any questions that the Justices may have developed while reading their briefs"[17].

60. The USA is a nation that prides itself on its technological advances and uses. But its Apex Court has always been tele-phobic. Now, the Corona pandemic has forced it to change its practice of direct hearing that stood unchanged since 1803. On 14 April 2020, *Washington Post* reported that "[i]he coronavirus pandemic has forced a change at the Supreme Court that justices have long resisted: live audio of the court's oral arguments". It has started holding oral arguments via teleconference. What might sound like a simple technological advance to the rest of the world marks, according to the *Washington Post*, a stunning change at the Supreme Court, where cameras have never been allowed and where justices have resisted repeated calls for live audio of oral arguments. Still no video—Supreme Court permitted only audio.

The UK Supreme Court:

61. The UK Supreme Court's Practice Direction 6 requires the parties to notify the Registrar within seven days after their filing the statement of facts, issues, and the appendix. They should express their readiness to have the appeal listed and must also "specify the number of hours" their respective counsel estimate to be necessary for their oral

17https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/supreme-1

submissions. Time estimates must be as accurate as possible, subject to the Court's discretion[18].

Is oral hearing a facet of natural justice?

62. In his celebrated commentary on *Administrative Law*[19], the learned author C. K. Thakker, after examining English and Indian case law, opines that "oral or personal hearing is not considered to be constituent of natural justice". With that prefatory observation, he agrees that an adjudicatory authority is bound to give a reasonable opportunity of hearing to the person against whom an action adversely affecting him is sought to be taken. Whether this reasonable opportunity of hearing should also include oral or personal hearing, according to him, is "an important and complicated question". After referring to standard commentaries on administrative law, such as de Smith's *Judicial Review of Administrative Action*, Wade & Forsyth's *Administrative Law*, Thakker CK concludes that "a fair hearing does not necessarily mean personal hearing and it cannot be urged that there must be an opportunity to be heard orally". As is the case with the English courts, even in the USA, the courts have not considered oral hearing to be a part of natural justice. To conclude, Thakker CK reckons that "in the absence of statutory requirement about oral hearing, courts will have to decide the matter taking into consideration the facts and circumstances of each case and decide the question."

63. As we may see, at the home front, in *FN Roy v. Collector of Customs*, the Supreme Court has held that "there is no rule of natural

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18https://www.supremecourt.uk/procedures/practice-direction-06.html

19C. K. Thakker, Administrative Law, EBC., 2nd ed., 2012, pp 513–15)

justice that at every stage person is entitled to a personal hearing"[20]. Closer to our case is *MP Industries Ltd v. Union of India*[21]. In that case, the Supreme Court has held that the issue of an oral hearing is a matter of the tribunal's discretion. In that case, Rule 55 mandates that "no order shall be passed against any applicant unless he has been given an opportunity to make his representations against the comments, if any, received from the state government or other authority". Then, the court per Subba Rao J (as his Lordship then was) has held that "the said opportunity need not necessarily be by personal hearing. It can be by written representation or by personal hearing. It depends on the facts of each case, and ordinarily it is on the discretion of the tribunal". Numerous are the judicial pronouncements on the lines of MP industries. Let us not burden this judgement with any more.

64. Indeed, as the Supreme Court has held time and again, an oral hearing is a facet of fair hearing, but it is not an indispensable part of it. In a proceeding, a court in a tribunal may modulate its procedure — sometimes allowing oral arguments and some other times requiring the parties to file their written arguments. More particularly, when the statute confers wide procedural powers and allows a judicial or quasi-judicial authority to regulate its own proceedings, we cannot read into those proceedings the requirement of oral hearing at every stage of the proceedings. It is, then, sure to defeat the legislative purpose, as well as the mandate.

20AIR 1957 SC 648

21AIR 1966 SC 671

65. A case in point is the Supreme Court's decision in *Ch. Rama Rao v. The Lokayukta*[22]. In that case, the petitioner contended that he had had no opportunity before the Lokayukta recommended actions against him. The Supreme Court disagreed, however. After referring to the relevant statutory provision, *Ch. Rama Rao* has distinguished between the preliminary investigation and regular investigation. Avoiding elaboration, I may note that *Ch. Rama Rao* underlines the fact that even when the Lokayukta recommends penal action after the preliminary inquiry, still notice is not an essential feature of the preliminary inquiry.

Conclusion:

66. Going by the settled precedential position, when a statute provides for an oral hearing, it is indispensable. On the contrary, when it is silent—coupled with a legislative declaration that the tribunal concerned will have the powers to regulate its procedure—it lies in the tribunal's discretion. In the name of natural justice, we cannot read a provision into a statute, which the legislature has consciously avoided or omitted. It is, indeed, fallacious to insist that a court or a tribunal should follow throughout the life of a case the procedure it adopted at the beginning. Every case, as we know, has many stages. At some stages, the tribunal adjudicates issues which involve disputed questions of fact; at other stages it adjudicates disputed questions of law; still at some other stages, it adjudicates questions of both law and fact. At every stage, whether a party should be allowed to advance oral documents lies in the tribunal's discretion.

67. Here, I may as well add that the petitioner's argument does not carry the conviction that if the Lokayukta has not framed

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22AIR 1996 SC 2450

Regulations, it cannot decide on its own the procedure it may adopt. Subordinate legislation, as the very nomenclature demonstrates, gets its life and legitimacy from the parent legislation. Once that parent legislation is clear, the subordinate legislation being silent, different, or even absent makes no difference. Framing of rules cannot be a condition precedent for a statutory provision to operate on its own—if it is otherwise enforceable.

68. As I have already noted, hear the Lokayukta has desired to decide the petitioner's application under section 27 of the Lokayukta act. It involves, to my mind, essentially a question of law. And for me, it is difficult to appreciate that on a question of maintainability one cannot do justice unless he has the advantage of the counsel's oral articulation. I hasten to add, however, this court does not intend to lay down that at no stage can a contestant count on oral arguments. I only hold that procedure need not be uniform throughout. Based on the gravity of the problem and intricacy of the issues, a tribunal may modulate its procedure. That apart, when a statute is clear, this court exercising its supervisory jurisdiction ought not to dictate to any tribunal the nitty-gritty of day-to-day proceedings.

69. Shri Sehgal has often emphasised that Sunil is a high ranked official with an impeccable reputation and that the proceedings before the Lokayukta may affect him adversely. So he wants the Tribunal to provide Sunil with every opportunity, including oral arguments, to refute the allegations and to vindicate his stand. In that backdrop, I may observe that this Court's ruling on the question of an oral hearing is fact centric. It has felt that for an interlocutory hearing of an application on maintainability, especially one under section 27 of the

Lokayukta act, under the exceptional circumstances as are prevailing, the Lokayukta has justly exercised its discretion. It has required the party to file written submissions, instead of advancing oral arguments. All is said and done, even the logistical inadequacies cannot be ignored. To the Lokayukta's credit, I may note that until the pandemic broke out, it gave every opportunity to all concerned; it has allowed them to argue orally, too.

Issues Answered:

(i) Once the Lokayukta adopts a procedure in a case, should that procedure remain unchanged throughout?

A. No. It can modulate the procedure differently at different stages.

(ii) Can Lokayukta not regulate its own procedure without its framing Regulations under Section 32 of the Lokayukta Act?

A. Rules do not control the substantive statute, nor is their presence sine qua non for the statutory enforcement.

(iii) Are the facts and issues involved in the case are so complex that the Lokayukta ought to allow the petitioner to advance oral arguments?

A. No.

(iv) Can the Lokayukta dispense with the petitioner's 'right to oral hearing' when its findings may have far-reaching consequences, including the public functionary's vacating the office or facing prosecution?

A. Here that stage has not reached. Application under Section 27 concerns only maintainability. Nothing more.

Result:

70. For any tribunal or quasi-judicial body—for that matter any adjudicatory agency, courts not excluded—"maximisation of judicial time and celerity of disposal" are the watchwords. As *P. N. Eswara*

Iyer would have it, let us not romanticise this process nor stretch it to snap it. And *Rang Nath Mishra*'s case holding, under the same Act of another State, must be the procedural precept: Let Lokayukta have the discretion to adopt such procedure as may be appropriate given the facts, given the stage, and given the circumstances of the case.

71. Once the case, if at all, survives the preliminary stage, including Sunil's challenge under Section 27 of the Act, at any subsequent stage of the proceedings, he may as well renew his request. That request may concern the oral hearing or any other procedural protection that can be treated as part of fair hearing.

72. With these observations, I refuse to interfere with the Lokayukta's impugned Order, dated 07.07.2020. As a result, the writ petition stands disposed of.

No order on costs.

DAMA SESHADRI NAIDU J

73. After the judgment was pronounced, Shri Jatin Sehgal, the learned counsel for the petitioner, has informed me that the Lokayukta has kept the matter today at 4.00p.m. Unless the petitioner is given breathing time, at least by a couple of days, it is impossible for him to explore any alternatives: either to file written arguments or to engage a local counsel so he could be physically present to argue the matter before the Lokayukta.

74. Then, I have queried with Shri Padiyar, the learned counsel for the

Lokayukta. He has submitted that the respondent could file his written arguments by tomorrow. But I reckon, as pleaded by Shri Sehgal, the petitioner should have a clear two days. That the petitioner and his counsel both live in Delhi cannot be forgotten. Indeed, even otherwise, the petitioner may explore instructing a local counsel if he desires.

75. Under these circumstances, I Lokayukta will defer taking any decision on the matter until 7.9.2020. If the petitioner fails on that day either to file his written arguments or advance oral arguments physically, the Lokayukta may proceed as per its convenience.

DAMA SESHADRI NAIDU J