

(f) FOR THAT it is required to be appreciated that with reference to a Lokpal Bill recently introduced in the Union Parliament, the Select Committee of the Rajya Sabha in Clause 4 thereof has recommended a collegium comprising the Prime Minister, the Speaker of Lok Sabha, the Leader of Opposition in Lok Sabha, the Chief Justice of India or his nominee-Judge and an eminent Jurist, to be a collegium, which will appoint the Chairperson and Members of the Lokpal. In view of the impugned judgment, in the aforesaid case, the Prime Minister, the Speaker of Lok Sabha, the Leader of Opposition in Lok Sabha and an eminent Jurist will be silent spectators on the collegium because the opinion of the Chief Justice of India would get primacy and exclusivity for the appointment of the Chairperson and Members of the Lokpal. However, such is not the intention of the law-makers. Having held that the Governor cannot act independently and is to act on the aid and advice of the Council of Ministries headed by Chief Minister, the impugned judgment failed to appreciate that it seeks to create a paradoxical situation wherein, the dissenting opinion of the Council of Ministries has become aid and advice to the Governor and the State will now have a Lokayukta whom the Council of Ministers never recommended. It is this paradox which is required to be removed by making a plain and simple reading of the provisions contained in Section 3 of the Act.

(g) FOR THAT there is an error apparent on the face of the impugned judgment because, primacy cannot be attached to the opinion of the Chief Justice only for the reason that he enjoys an independent Constitutional status and that he is the best person to judge the suitability of any retired High Court Judges for the post in question. An apprehension voiced in the impugned judgment to the effect that in the absence of primacy to the opinion of the Chief Justice for the appointment of Lokayukta, there will be finality of choice on the part of the Council of Ministers, which would be akin to allowing a person who is likely to be investigated to choose his own Judge, fails to appreciate that similar process is involved in other Constitutional appointments like the **Comptroller & Auditor General of India** under Article 148, **Election Commissioner** under Article 324, Chairman and Members of the **Public Service Commission** under Article 316, etc. Though the said appointments are effected on the aid and advice of the Prime Minister and his Council of Ministers, they act independently of the Government. So is the position with reference to the appointment of Judges of this Hon'ble Court and the High Courts. Though these dignitaries are appointed by the President/Governor on the aid and advice of the Council of Ministers, they have to take decisions against those who have played a major role in their appointment. Simply because they

are duty-bound to take decision even against those who appoint them, does not take away the power of the elected representatives to be part of the decision-making process. The Council of Ministers is the repository of the people's verdict. In a parliamentary democracy, the role of the elected representatives in the decision-making process in appointing the above-referred Constitutional functionaries cannot be obliterated and given to the Governor who is the appointee of the Central Government. If this principle holds good in case of Constitutional functionaries, the same would equally hold good in case of statutory posts such as Lokayukta. Section 14 of the Act shows that the State Legislature which is the representative body of the people, is supreme and not the Governor, who is the nominee of the Central Government. This provision is similar to Article 151 of the Constitution of India, where the Comptroller & Auditor General of India is also required to send report to the President/Governor, who has to place it before the Parliament/ Legislative Assembly.

- (h) FOR THAT this Hon'ble Court failed to advert to the issue specifically raised on behalf of the Petitioners as regards non-applicability of the judgment of this Hon'ble Court in the case of *Justice K. P. Mohapatra vs. R. C. Naik, (Supra)*, to the facts of the instant case. It is pertinent to note that in Justice Mohapatra's case (Supra), the issue of primacy of Chief Justice