



Leader of Opposition (Gujarat Vidhansabha)
Gandhinagar, Gujarat State, India

Shaktisinh Gohil

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Date: - - 200

March 3, 2010

To,
Shri Narendrabhai Modi,
Chief Minister
State of Gujarat
Gandhinagar.

Sub : Consultation for appointment of Lokayukta.

Ref : Your D.O. letter No. LKY-10.2010-2239-G dated March, 2010.

Sir,

The Gujarat Lokayukta Act, 1986, has been enacted to make provision for appointment of 'Lokayukta' for investigation of allegations against public functionaries including the Chief Minister, in the State of Gujarat and for other connected and incidental matters.

Section 2(5) of the said Act defines a 'minister' to mean a member of the council of Minister of the State of Gujarat by whatever name called i.e. to say the Chief Minister, a Minister, Minister of State and Deputy Minister and includes a Parliamentary Secretary to the Chief Minister.

Section 2(7) of the said Act defines a public functionary amongst others as defined under sub-clauses (a) to (d), specifically takes within the ambit of the definition of public functionary a Minister under Section 2(7)(a).

Having regard to provisions of the Act, a Lokayukta appointed under Section 3 of the said Act has the authority, power and duties to investigate in action which is taken by or with the general or specific provision of a public functionary including a Chief Minister or a Minister as defined under Section 2(5) of the said Act, in cases



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where a complaint involving an allegation is made in respect of an action which can be in the opinion of the Lokayukta subject matter of an allegation.

Thus, a Lokayukta appointed under Section 3 of the said Act is under the provisions of the said Act invested with the powers to inquire against the Chief Minister among other public functionaries who are covered within the scope and ambit of an inquiry under the said Act by the Lokayukta.

Section 3(1) of the said act provides that, for the purpose of conducting investigation in accordance with the provisions of the said Act, the Governor shall, by warrant under his hand and seal, appoint a person to be known as the Lokayukta.

Proviso to Section 3(1) provides that, the Governor shall appoint a Lokayukta after consultation with the Chief Justice of the High Court and also after consultation with the leader of opposition in the Legislative Assembly. Provisions of Section 3(1), above referred to are quoted herein below for your ready reference:-

"3. Appointment of Lokayukta :

(1). For the purpose of conducting investigation in accordance with the provisions of the said Act, the Governor shall, by warrant under his hand and seal, appoint a person to be known as the Lokayukta.

Provided that the Lokayukta shall be appointed after consultation with the Chief Justice of the High Court and except where such appointment is to be made at a time when the Legislative Assembly of the State of Gujarat has been dissolved or a proclamation under Article 356 of the Constitution is in operation in the State of Gujarat, after consultation also with the leader of opposition in the Legislative Assembly, or if there be no such leader, person



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elected in his behalf by the members of the opposition in that house in such manner as the Speaker may direct.

(2) A person shall not be qualified for appointment as a Lokayukta unless he is or has been a Judge of the High Court;

(3) Every person appointed as the Lokayukta shall, before entering upon his office, make and subscribe, before the Governor, or some person appointed in that behalf by him, as oath for affirmative in the form set out for the purpose in the First Schedule."

Having regard to the said provisions of the Act, the principal object of the Act which has been enacted being to inquire into allegations against public functionaries, including the Chief Minister, the State Legislature in its legislative wisdom has expressly conferred power of appointment of a Lokayukta only upon the Governor. The only statutory requirement envisaged in making of appointment of a Lokayukta by the Governor is consultation with the Chief Justice of the High Court and leader of the opposition in the Legislative Assembly. Thus, under the provisions of the said Act, there is no scope for consultation with the Chief Minister of the State either by the Governor or by the leader of opposition. In fact and in law, the Chief Minister of the State of Gujarat has neither the authority nor the jurisdiction to embark upon any consultation with the undersigned - leader of opposition in the appointment of a Lokayukta. The object of the Act being to inquire into the allegations even against the Chief Minister by the Lokayukta it stands to reason and logic that there is neither any requirement of any consultation in the matter of appointment of a Lokayukta with the Chief Minister of the State of Gujarat nor is the power of appointment of a Lokayukta conferred upon the Government. If the Act envisaged the appointment of a Lokayukta by the Government, it would have expressly stated so.



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The scheme of the Act and more particularly provisions of Section 3(1) of the Act rules out any process being initiated by the Chief Minister of the State of Gujarat or by the Government in the matter of consultation with the leader of opposition for the purpose of appointment of a Lokayukta. On the contrary, the provisions of the Act expressly and impliedly envisaged the appointment of the Lokayukta only by Her Excellency the Governor of Gujarat and not by either the Chief Minister of the State of Gujarat.

Provisions of the Act show that consultation in the matter of appointment of a Lokayukta with the Chief Minister of the State of Gujarat is consciously excluded, as a Chief Minister could himself be in a given situation be subject matter of an inquiry. Thus, there is neither any express provision nor any implied requirement of the Chief Minister of the State of Gujarat initiating process of consultation in the matter of appointment of a Lokayukta. Having regard to the provisions of Section 12 of the Gujarat Lokayukta Act, 1986, consultation with the Chief Minister even by the Governor in the matter of appointment of a Lokayukta is expressly ruled out, read in conjunction with provisions of Section 3 (1) and more particularly the proviso thereof.

There is no provision in the Act nor in the Rules framed under the Act, conferring powers on either the Chief Minister of the State of Gujarat or on the Government to initiate the process of appointment of a Lokayukta. The power of appointment of a Lokayukta under Section 3(1) of the said Act is expressly conferred upon the Governor and it is only Her Excellency the Governor of Gujarat, who can initiate process of appointment of a Lokayukta in consultation with the leader of opposition as well as the Chief Justice of the High Court of Gujarat.



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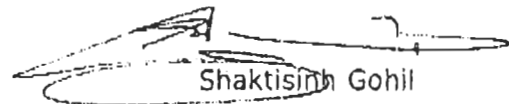
The Act clearly manifests an intention ruling out any consultation with the Chief Minister of the State of Gujarat in the matter of appointment of a Lokayukta.

In view of the above statutory provisions, I expressly object to the initiation of the process of consultation as informed to me by your above referred D.O. letter and regret to state that the initiation of the process being contrary to the express provisions of the Act and lacking the authority in law, I will not be in a position to agree to any consultation with you, Sir, as the Chief Minister of State of Gujarat.

I may also to request you to immediately withdraw your above referred letter and permit the law to take its own course in the matter of appointment of a Lokayukta. You may also note that any unwarranted interference in the matter of appointment of a Lokayukta would be strictly viewed.

Thanking you,

Yours faithfully,



Shaktisinh Gohil

C.C. to :

**Her Excellency Governor of Gujarat,
Rajbhavan,
Sector - 20,
Gandhinagar.**