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PART III—Acts of the West Bengal Legislature.

GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative

NOTIFICATION

No. 865-L.—21st May, 2004.—The following Act of the West Bengal Legislature, having been assented to by the President of India is hereby published for general information:—

West Bengal Act XXXV of 2003

THE WEST BENGAL LOKAYUKTA ACT, 2003.

[*Passed by the West Bengal Legislature.*]

[Assent of the President of India was first published in the *Kolkata Gazette, Extraordinary,* of the 21st May, 2004.]

An Act to provide for the establishment of the institution of Lokayukta to investigate the complaints by the citizens against the public functionaries in West Bengal alleging corrupt practices by them and for matters directly connected therewith.

WHEREAS it is expedient to provide for the establishment of the institution of Lokayukta to investigate the complaints by the citizens against the public functionaries in West Bengal alleging corrupt practices by them and for matters directly connected therewith;

It is hereby enacted in the Fifty-fourth Year of the Republic of India, by the Legislature of West Bengal, as follows:—

Short title and commencement.

1. (1) This Act may be called the West Bengal Lokayukta Act, 2003.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on such date as the State Government may, by notification, appoint.

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The West Bengal Lokayukta Act, 2003.

(Sections 2, 3.)

Definitions.

2. In this Act, unless the context otherwise requires,—

(1) "action" means action taken by a public functionary in the discharge or purported discharge of his public function;

(2) "Chief Minister" means the Chief Minister of the Government of West Bengal;

(3) "competent authority", in relation to a public functionary, means,—

(i) in the case of the Chief Minister, the State Legislative Assembly;

(ii) in the case of a Minister, the Chief Minister:

Provided that during the period of operation of any proclamation issued under article 356 of the Constitution of India, the Governor;

(iii) in the case of a Member of the State Legislative Assembly, the Speaker of the State Legislative Assembly.

Explanation.—The Speaker of the Legislative Assembly shall act in consultation with the Chief Minister and the Leader of the Opposition in the State Legislative Assembly;

(iv) in the case of any other public functionary, such authority as may be prescribed;

(4) "complaint", in relation to a public functionary, means an allegation made in writing by any person that such public functionary, in discharge or purported discharge of his public function has been guilty of corrupt practice;

(5) "corrupt practice" means that the public functionary in any of his action has been guilty of wilful lack of financial integrity and/or wilful abuse of power for personal gain;

(6) "Governor" means the Governor of the State of West Bengal;

(7) "grievance" means a claim by a person that he sustained injustice or undue hardship in consequence of the wilful failure to perform duties duly assigned to a public functionary;

(8) "Lokayukta" means the person appointed as such under section 3;

(9) "Minister" means a Minister of the Government of West Bengal, and includes a Deputy Chief Minister, a Minister, a Minister of State, a Deputy Minister;

(10) "notification" means a notification published in the *Official Gazette*;

(11) "officer" means a public servant or a person holding any office or post in connection with the affairs of the State of West Bengal and against whom no disciplinary or penal action has been taken or contemplated under any statute or statutory rule;

(12) "prescribed" means prescribed by rules made under this Act;

(13) "public functionary" means a person who is—

(i) the Chief Minister or a Minister;

(ii) a Member of the State Legislative Assembly;

(iii) any other person holding an office or post consequent upon an election held under any law for the time being in force;

(14) "Upa-Lokayukta" means a person appointed to be Upa-Lokayukta under section 3.

Appointment of Lokayukta and Upa-Lokayukta.

3. (1) For the purpose of conducting investigations and inquiries in accordance with the provisions of this Act, the Governor shall, by warrant under his hand and seal, appoint a person to be known as the Lokayukta and one or more persons to be known as Upa-Lokayukta:

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The West Bengal Lokayukta Act, 2003.

(Sections 4, 5.)

Provided that—

the Lokayukta and Upa-Lokayukta shall be appointed by the Governor on the advice tendered by the Chief Minister in consultation with the Speaker and the Leader of the Opposition of the Legislative Assembly of the State.

(2) A person shall not be qualified for appointment as Lokayukta unless he has the qualification of being appointed a Judge of the Supreme Court under article 124 of the Constitution.

(3) A person shall not be qualified for appointment as Upa-Lokayukta unless he has the qualification for being appointed a Judge of the High Court under article 217 of the Constitution.

(4) Notwithstanding anything contained in any other provision of this Act, a person of high integrity and eminence shall be appointed a Lokayukta or Upa-Lokayukta, if such recommendation is made by the Chief Minister in consultation with the Speaker and the Leader of the Opposition of the State Legislative Assembly.

(5) (a) Temporary or casual vacancy in the office of the Lokayukta or the Upa-Lokayukta shall be filled up in accordance with prescribed rules for a period not exceeding six months.

(b) If the Lokayukta or Upa-Lokayukta is unable to perform his duties for six months or more, the Governor may declare the office vacant:

Provided that the Governor shall hear such Lokayukta or Upa-Lokayukta before declaring such office as vacant.

(c) A vacancy occuring in the office of the Lokayukta or Upa-Lokayukta by reason of his death, resignation, retirement or removal shall be filled up as soon as possible, but not later than three months from the date of occurrence of such vacancy.

Lokayukta or Upa-Lokayukta hold no other office.

4. The Lokayukta or Upa-Lokayukta shall not be a Member of Parliament or a Member of the Legislature of any State, or hold any office of profit, other than his office as the Lokayukta or, as the case may be, Upa-Lokayukta, or be connected with any political party, or carry on any business or practice any profession, and, accordingly, a person appointed as the Lokayukta or Upa-Lokayukta shall, before he enters upon his office,—

(a) if he is a Member of Parliament or of the Legislature of any State, resign such membership;

(b) if he holds any office of profit, resign such office;

(c) if he is connected with any political party, sever his connection with it;

(d) if he is carrying on any business, sever his connection (short of divesting himself of ownership) with the conduct and management of such business; or

(e) if he is practising any profession, suspend practice of such profession till his tenure to that post.

Term of office of Lokayukta and Upa-Lokayukta.

5. (1) Every person appointed as the Lokayukta or Upa-Lokayukta shall hold office for a period of three years from the date he assumes his office:

Provided that—

(a) the Lokayukta or Upa-Lokayukta may, in writing under his hand addressed to the Governor, resign his office;

(b) the Lokayukta or Upa-Lokayukta may be removed from office in the manner provided in section 6.

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The West Bengal Lokayukta Act, 2003.

(Sections 6-9.)

(2) On ceasing to hold office, the Lokayukta or Upa-Lokayukta shall be ineligible for further appointment as the Lokayukta or Upa-Lokayukta or for any employment under the State Government or for any employment under the local authority, University, statutory body or corporation, society, co-operative society, Government company, or other body or corporation constituted by or under any State law.

Removal of Lokayukta or Upa-Lokayukta.

6. (1) The Lokayukta or Upa-Lokayukta shall not be removed from his office except by an order of the Governor, passed after an address by the Legislative Assembly of the State supported by a majority of the total membership of the House and by a majority of not less than two-thirds of the members of that House present and voting, has been presented to the Governor in the same session for such removal on the ground of proved misconduct including corrupt practice or incapacity.

(2) The procedure for the presentation of an address and for the investigation and proof of the misconduct including corrupt practice or incapacity of the Lokayukta or Upa-Lokayukta under sub-section (1) shall be as provided in the Judges (Inquiry) Act, 1968, in relation to the removal of a Judge and, accordingly, the provisions of that Act shall apply, *mutatis mutandis*, in relation to the removal of the Lokayukta or Upa-Lokayukta, as the case may be, as they apply in relation to the removal of a Judge. 51 of 1968.

Matters which may be investigated by Lokayukta or Upa-Lokayukta.

7. (1) Subject to the provisions of this Act, the Lokayukta may investigate any complaint received by him with the general or specific approval of, or at the instance of the competent authority, in any case where a complaint is made in respect of such action which can be in the opinion of the Lokayukta, the subject of a complaint.

(2) Subject to the provisions of this Act, the Upa-Lokayukta may investigate any complaint which has been made over to him by Lokayukta.

Matters not subject to investigation by Lokayukta.

8. (1) The Lokayukta or Upa-Lokayukta shall not investigate any complaint,—

(a) in respect of which a formal and public inquiry has been ordered under the Public Servants (Inquiries) Act, 1850, or 37 of 1850.

(b) in respect of a matter which has been referred to a Commission of Inquiry appointed under the Commissions of Inquiry Act, 1952, for inquiry, or 60 of 1952.

(c) where disciplinary action for the same matter has already been initiated or is contemplated.

(2) The Lokayukta or Upa-Lokayukta shall not investigate any complaint, if such complaint is made after the expiry of six months from the date on which the action complained of is alleged to have taken place:

Provided that the Lokayukta or Upa-Lokayukta may, on being satisfied on the facts and circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interest of justice, condone the delay and investigate the complaint.

(3) The Lokayukta or Upa-Lokayukta shall not, except on a reference by a court of law, investigate any matter which is under adjudication by such court of law.

Provision relating to complaints.

9. (1) Subject to the provisions of this Act, complaint may be made by any person to the Lokayukta in respect of any action:

Provided that death of the complainant shall not debar, if the Lokayukta or Upa-Lokayukta who is in seisin of the matter so desires, to proceed with the investigation with such help as he considers necessary.

(2) Every complaint shall be made in such form and shall be accompanied by such affidavits as may be prescribed.

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The West Bengal Lokayukta Act, 2003.

(Sections 10, 11.)

Procedure in respect of investigation.

10. (1) Where the Lokayukta or Upa-Lokayukta, is satisfied on preliminary enquiry that the complaint needs investigation he—

(a) shall forward a copy of the complaint, a statement setting out the grounds of such investigation, to the public functionary concerned and the competent authority concerned for information;

(b) shall give the public functionary concerned an opportunity to offer his comments on such complaint or statement; and

(c) may make such order as to the safe custody of documents relevant to the investigation as he deems fit.

(2) (a) Every preliminary enquiry referred to in sub-section (1) shall be made in private and, in particular, the identity of the complainant and of the public functionary affected by such preliminary enquiry shall not be made public, whether before or during such preliminary enquiry, but the result of every investigation made under sub-section (1) shall be made public.

(b) Every such investigation shall be completed as early as possible but in no case the period of such investigation shall exceed one year.

(3) (a) Save as otherwise provided in the foregoing provisions of this section, the procedure for making any investigation shall be such as the Lokayukta or, as the case may be, the Upa-Lokayukta considers appropriate in the circumstances of each case, but regard shall always be given to the principles of natural justice.

(b) The Lokayukta or Upa-Lokayukta, as the case may be, may give direction to any officer or investigating agency, including the police, under the State Government to assist him in the conduct of any investigation under this Act, and such officer or investigating agency or the police, as the case may be, shall promptly comply with such direction.

(4) The Lokayukta or Upa-Lokayukta may, in his discretion, refuse to investigate, or discontinue the investigation of, any complaint involving any allegation if, in his opinion,—

(a) the complaint is frivolous or vexatious or is not made in good faith; or

(b) there are no sufficient grounds for investigation or, as the case may be, for continuing the investigation; or

(c) other remedies are available to the complainant and, in the circumstances of the case, it would be more proper for the complainant to avail of such remedies.

(5) In any case where the Lokayukta or Upa-Lokayukta decides not to entertain a complaint or decides to discontinue any investigation in respect of the complaint, he shall record his reasons therefor and communicate the same to the complainant and the public functionary concerned.

Evidence.

11. (1) Subject to other provisions of this section, for the purposes of any investigation (including preliminary enquiry, if any, before such investigation) under this Act, the Lokayukta or Upa-Lokayukta may require any public servant or any other person, who, in his opinion, is able to furnish information or produce documents, relevant to the investigation, to furnish such information or produce such document.

(2) For the purposes of any such investigation (including the preliminary enquiry), the Lokayukta or Upa-Lokayukta shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:— 5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

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(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) such other matters as may be prescribed.

(3) Any proceeding before the Lokayukta or Upa-Lokayukta shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code, 1860. 45 of 1860.

(4) No person shall be required or authorised, by virtue of this Act, to furnish such class or category of information, answer or question, or produce so much of such class or category of document,—

(a) as might prejudice the security or defence or international relations of India (including the relations of India with the Government of any other country or with any international organisation), or

(b) as might involve the disclosure of proceedings of the Council of Ministers of the State Government or any Committee of that Council of Ministers, and

(c) to give any evidence or produce any document which he could not be compelled to give or produce in any proceedings before a Court.

(5) For the purpose of sub-section (4), a certificate issued by the Chief Secretary to the Government of West Bengal, certifying that any information or answer or any portion of a document is of the class or category specified in clause (a) or clause (b), shall be conclusive and binding.

Reports of Lokayukta and Upa-Lokayukta.

12. (1) If, after investigation of any complaint in respect of any action under this Act, the Lokayukta or Upa-Lokayukta is satisfied that such complaint is substantiated, either wholly or partly, he shall send to the competent authority a report in writing, recording therein his findings and recommendations along with the relevent documents, materials or other evidence.

(2) The competent authority shall, on receipt of the report under sub-section (1), examine the said report, take appropriate action and inform the Lokayukta or the Upa-Lokayukta.

Annual Reports of Lokayukta and Upa-Lokayukta.

13. (1) The Lokayukta and the Upa-Lokayukta shall present annually a consolidated report on the work done under this Act to the State Government.

(2) On receipt of annual report under sub-section (1), the State Government shall cause a copy thereof to be laid before the State Legislature along with a memorandum of action taken on the recommendations of the Lokayukta and the Upa-Lokayukta and the reasons for non-acceptance of the recommendations, if any.

Prosecution for false complaint.

14. (1) Notwithstanding anything contained in section 10 or elsewhere in this Act, whoever wilfully or maliciously makes any false complaint under this Act, shall, on conviction, be punished with imprisonment for a term which may extend to one year but shall not be less than three months and shall also be liable to fine.

(2) No court, except the court of a Judicial Magistrate of the first class, shall take cognizance of an offence under sub-section (1).

(3) No such court shall take cognizance of any such offence unless the complaint is made with the previous sanction of the Lokayukta or Upa-Lokayukta, as the case may be, by the person against whom the false complaint was made.

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The West Bengal Lokayukta Act, 2003.

(Sections 15, 16.)

(4) Any such court may, on conviction of a person making the false complaint, award to the opposite party, such amount of compensation out of the amount of fine, as it thinks fit.

Staff of Lokayukta and Upa-Lokayukta.

15. (1) Subject to the approval of the Governor the Lokayukta may appoint, or authorise an Upa-Lokayukta or any officer subordinate to the Lokayukta or Upa-Lokayukta to appoint, officers and other employees to assist the Lokayukta and the Upa-Lokayukta in the discharge of their functions under this Act.

(2) Without prejudice to the provisions of sub-section (1), the Lokayukta or Upa-Lokayukta may, for the purpose of conducting investigations under this Act, utilise, in such manner as may be prescribed, the services of,—

(a) any officer or investigating agency of the State Government with the concurrence of that Government;

(b) any other person or agency.

Secrecy of information.

16. (1) Any information obtained by the Lokayukta or Upa-Lokayukta or any of his officers or other employees in the course of, or for the purposes of, any preliminary enquiry under this Act, and any evidence recorded or collected in connection with such information, shall, subject to the provisions of clause (a) of sub-section (2) of section 10, be treated as confidential; and notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall have jurisdiction to compel the Lokayukta or Upa-Lokayukta or any public servant to give evidence relating to such information or to produce the evidence so recorded or collected. 1 of 1872.

(2) Nothing in sub-section (1) shall apply to the disclosure of any information or particulars—

(a) for the purposes of any investigation or any report to be made on such investigation or any action or proceedings to be taken on such report; or

(b) for the purposes of any proceedings for any offence under the Official Secrets Act, 1923, or any offence of giving false evidence or fabricating false evidence under the Indian Penal Code, 1860, or any trial of an offence under section 14, or any proceedings under section 17, of this Act; or 19 of 1923. 45 of 1860.

(c) for such other purposes as may be prescribed.

(3) Such officer or authority as may be prescribed in this behalf, may give notice in writing to the Lokayukta or Upa-Lokayukta, as the case may be, with respect to any document or information specified in the notice or any class or category of documents so specified, that in the opinion of the State Government, the disclosure of the document or the information or the class or category of documents would be prejudicial to the public interest; and where such a notice is given, the Lokayukta or Upa-Lokayukta may, for reasons to be recorded in writing decide as to whether the disclosure of such document or information or class or category of documents involves public interest. In case the disclosure of any document or information or class or category of documents so specified is held to involve public interest, the Lokayukta or Upa-Lokayukta, as the case may be, or any of his officers or other employees shall not communicate to any person any such document or information or class or category of documents.

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Intentional insult or interruption to, or bringing into disrepute, Lokayukta or Upa-Lokayukta.

17. (1) Whoever intentionally insults or causes any interruption to the Lokayukta or Upa-Lokayukta while the Lokayukta or Upa-Lokayukta is making any investigation under this Act, shall, on conviction, be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Whoever, by words spoken or intended to be read, makes or publishes any statement, or does any other act, which is calculated to bring the Lokayukta or Upa-Lokayukta into disrepute, shall, on conviction, be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

(3) The provisions of section 199 of the Code of Criminal Procedure, 1973 (hereinafter referred to in this sub-section as the said Code), shall apply in relation to an offence under sub-section (1) or sub-section (2) of this section as they apply in relation to an office referred to in sub-section (1) of section 199 of the said Code, subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor except with the previous sanction,— 2 of 1974.

(a) in the case of an offence against Upa-Lokayukta, of the Lokayukta;

(b) in the case of an offence against Lokayukta, of the Upa-Lokayukta concerned.

(4) The Lokayukta and Upa-Lokayukta shall have and may exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of any of them as a High Court has and may exercise, and, for this purpose, the provisions of the Contempt of Courts Act, 1971, shall have effect, subject to the modification that any reference therein to the High Court shall be construed to be a reference to the Lokayukta or Upa-Lokayukta, as the case may be. 70 of 1971.

Protection of action taken in good faith.

18. (1) No suit, prosecution or other legal proceedings shall lie against the Lokayukta or Upa-Lokayukta or against any officer, employee, investigating agency, or other person or agency referred to in section 14 in respect of anything which is in good faith done or intended to be done under this Act.

(2) No proceedings of the Lokayukta or Upa-Lokayukta shall be deemed to be invalid by reason only of any defect or infirmity in his appointment.

(3) No proceeding, decision, finding or recommendation of the Lokayukta or Upa-Lokayukta shall be liable to be challenged, reviewed, quashed or called in question in any court or tribunal.

Conditions of appointment of Lokayukta and Upa-Lokayukta.

19. The Lokayukta and Upa-Lokayukta shall be entitled to such allowances and privileges and other conditions of appointment, as may be prescribed.

Conferment of additional functions on Lokayukta and Upa-Lokayukta.

20. (1) The State Government may, by order in writing, subject to such conditions and limitations as may be specified in the order, require the Lokayukta or Upa-Lokayukta to investigate any allegation (being an allegation in respect of which a complaint may be made under this Act to the Lokayukta or Upa-Lokayukta) and, notwithstanding anything contained in this Act, the Lokayukta or Upa-Lokayukta, as the case may be, shall comply with such order.

(2) When any additional functions are conferred on the Lokayukta or Upa-Lokayukta under sub-section (1) or when the Lokayukta or Upa-Lokayukta investigates any allegation the Lokayukta or Upa-Lokayukta, as the case may be, shall exercise the same powers and discharge the same functions as he would exercise and discharge in the case of any investigation on a complaint involving an allegation, and the provisions of this Act shall apply accordingly.

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The West Bengal Lokayukta Act, 2003.

(Sections 21-23.)

Power of State Government to make rules.

21. (1) The State Government may, in consultation with the Lokayukta, by notification, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters:—

(a) the competent authority under sub-clause (iv) of clause (3) of section 2;

(b) the matters in respect of which the Lokayukta or Upa-Lokayukta shall have powers of a civil court under clause (f) of sub-section (2) of section 11;

(c) the other purposes in relation to disclosure of any information or evidence under clause (c) of sub-section (2), and the officer or authority for the purposes of sub-section (3), of section 16;

(d) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before the State Legislature, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, the State Legislature agrees in making any modification in the rule or the State Legislature agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power of Lokayukta to make regulations.

22. (1) The Lokayukta may, with the approval of the State Government, by notification, make such regulations as he may deem necessary for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the matters namely:—

(a) the normal working hours of the office of the Lokayukta, and holding of sittings of the Lokayukta and Upa-Lokayukta outside normal working hours;

(b) the holding of sittings of the Lokayukta and Upa-Lokayukta at places other than the place of ordinary sittings;

(c) the procedure which may be followed by the Lokayukta and Upa-Lokayukta for conducting proceedings including inquiry and investigation;

(d) the forms in which complaints may be made, the affidavits which may accompany such complaints, and the fees, if any, which may be charged in respect thereof;

(e) the forms and notices as may, in the opinion of the Lokayukta, be necessary for carrying out the inquiry and investigation.

Removal of doubts.

23. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of publication of this Act in the *Official Gazette.*

By order of the Governor,

S. K. NANDY,
Secy. to the Govt. of West Bengal,
Law Department.

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