Lokpal of India
Plot No.6, Vasant Kunj Institutional Area – Phase-II
New Delhi – 110070

Complaint No.	:	**05 / 2025** (arising out of Dy. No. 3102024 and Dy. No.062025)
Date	:	**27.01.2025**
Coram	:	**Shri Justice A.M. Khanwilkar** **Chairperson** **Shri Justice L. Narayana Swamy** **Member** **Shri Justice Sanjay Yadav** **Member** **Shri Sushil Chandra** **Member** **Shri Justice Ritu Raj Awasthi** **Member** **Shri Pankaj Kumar** **Member** **Shri Ajay Tirkey** **Member**

ORDER

1. These two complaints are filed by the same complainant against a sitting Additional Judge of the **xxxxxx(name redacted)** High Court, alleging that the named judge had influenced the concerned Additional District Judge, in the State of **xxxxxx(name redacted)** and a Judge of the same High Court who had to deal with the suit filed against the complainant by a private company, to favour that company. It is alleged that the private company was earlier client of the named High Court Judge, while he was practicing as an advocate at the Bar.

2. Recently, we had an occasion to examine a complaint against the previous Chief Justice of India. After examining the relevant provisions of the Lokpal and Lokayuktas Act, 2013 (for short, the Act of 2013), it was concluded vide order dated 03.01.2025 in Complaint No. 255/2024 that the judges of the Supreme Court including the Chief Justice of India even though public servants in terms of Section 2(c) of the Prevention of Corruption Act, 1988 (for short, Act of 1988), are not amenable to the jurisdiction of the

Lokpal. Because, they do not come within the sweep of the expression public servant predicated in Section 2(1)(o) read with Section 14 of the Act of 2013. In that, the Supreme Court is a body or adjudicatory authority established in terms of Article 124 of the Constitution of India; and not under an Act of Parliament as such. It was clarified in that decision that the issue of applicability of the stated principle to other courts established by an Act of Parliament, was not being discussed.

3. In the present case, that issue directly arises for our consideration. Notably, unlike the Supreme Court of India, the High Courts for the concerned State during the pre-constitution period or so to say British India, had been established under the Indian High Courts Act, 1861 enacted by the British Parliament. This Act authorised creation of High Courts in British India, especially in Calcutta, Madras and Bombay through Letters Patent issued by the British Monarch. The Government of India Act, 1935, also passed by the British Parliament, restructured the High Courts which were already functioning in British India regime; and recognized that the High Courts were established by virtue of various Letters Patents and Regulating Act issued by the British Monarch. Pertinently, the

Constitution of India, vide Article 214, intrinsically recognises the existence of all the High Courts established under the Act of 1861, the Act of 1935 and the Letters Patents issued by the British Monarch; and restates that there shall be a High Court for each State. In contrast, Article 124 is for "Establishment" and Constitution of the Supreme Court of India, as it was not in existence hitherto.

4. After the Constitution of India came into being, the High Courts established during the British India period, under the Act of 1861 or the Act of 1935 and Letters Patent issued by the British Monarch, continued to function as the High Court of the concerned State enlisted in the First Schedule of the Constitution. Notably, the Act of the Dominion Legislature has been regarded as a Central Act, means an Act of Parliament in terms of Section 3 (7) of the General Clauses Act, 1897.

5. In due course of time, however, the States so formed and specified in the First Schedule of the Constitution, had to be reorganized. Because of reorganization of the States and in terms of (Act No.**xxxxxx** of **xxxxxx**), the **xxxxxx(name redacted)** Act, **xxxxxx(redacted)** (for short, Act of **xxxxxx(redacted)** in

particular, the State of **xxxxxx(name redacted)** was carved out from the then State of **xxxxxx(name redacted)** . The preamble of the Act of **xxxxxx(redacted)** made by the Parliament, predicates that it is an Act to provide for the formation of the State of **xxxxxx(name redacted)** , the increasing of the area of the State of **xxxxxx(name redacted)** and the diminishing of the area of the State of **xxxxxx(name redacted)** , and for matters connected therewith. Section **xxxxxx** of the Act of **xxxxxx(redacted)** is of some relevance. The same reads thus:

> "High Court for **xxxxxx(name redacted)** .—(1) **As from the xxxxxx(name redacted), or such earlier date as may be appointed under sub-section (2), there shall be a separate High Court for the State of xxxxxx(name redacted) (hereinafter referred to as "the High Court of xxxxxx(name redacted) ").**
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> (2) The President may, if a resolution recommending the **establishment of a separate High Court** for the State of **xxxxxx(name redacted)** has, after having been adopted by the Legislative Assembly of that State, been submitted to him, appoint, by notifications in the Official Gazette, a date earlier than the **xxxxxx(redacted)**, for the purpose of sub-section (1).
>
> (3) The date mentioned in sub-section (1) or, if an earlier date is appointed under subsection (2), the date so appointed is hereinafter referred to as the "prescribed day."
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> (4) The principal seat of the High Court of **xxxxxx(name redacted)** shall be at such place as the Governor of **xxxxxx(name redacted)**

may, before the prescribed day, by order, appoint: Provided that if a resolution recommending any place for such principal seat is adopted by the Legislative Assembly of **xxxxxx(name redacted)** , such place shall be appointed by the Governor as the principal Seat."

(emphasis supplied)

6. Accordingly, the High Court for the newly created State of **xxxxxx(name redacted)** was required to be established anew. That was done by the Act of **xxxxxx(redacted)**, enacted by the Parliament of India. Indeed, further reorganization of the State of **xxxxxx(name redacted)** took place in **xxxxxx(redacted)** and finally in **xxxxxx(redacted)** vide the State of **xxxxxx(name redacted)** Reorganistion Act, **xxxxxx(redacted)** (for short, Act of **xxxxxx(redacted)**), enacted by the Parliament of India. Thus understood, the High Court of **xxxxxx(name redacted)** was originally established by an Act of Parliament as an adjudicatory authority and a body of judges for that High Court; and continues to be so, despite the diminished area of the original State of **xxxxxx(name redacted)**. Going by the legislative history, it must follow that the High Court of **xxxxxx(name redacted)** being an "authority" empowered by law to discharge adjudicatory functions, has been established by an Act of Parliament as a "body" of

Judges for that State. Thus, the High Court would qualify the description of at least two juristic entities "by whatever name called", out of the eight mentioned in Section 14(1)(f) of the Act of 2013 established by an Act of Parliament, which are mutually exclusive descriptions owing to use of expression "or" in that provision.

7. It will be too naive to argue that a Judge of a High Court will not come within the ambit of expression "any person" in clause (f) of Section 14(1) of the Act of 2013. The expression "Judge" has always been understood as not only every person who is officially designated as a Judge, but also every person. To wit, it will be useful to advert to the definition of Judge in Section 19 of the Indian Penal Code (for short, IPC) as also the enactment of Anti-Corruption Laws (Amendment) Act, 1964 (Act 40 of 1964) and re-enacted Section 21 with the third category of public servant, including sub-clause (iv) of clause (c) of Section 2 of the Act of 1988 – defining expression public servant to mean any Judge. In paragraph 35 of the majority view exposited by Justice Shetty in the case of K.Veeraswamy vs. Union of India, (1991) 3 SCC 655, it is plainly expounded that a Judge of the superior court cannot

therefore be excluded from the definition of public servant and would squarely fall within the purview of the Prevention of Corruption Act,1947 (analogous to Act of 1988). Applying the underlying principle and the logic as given in this reported decision, the expression "any person" in Section 14(1)(f) of the Act of 2013 must include a Judge of the High Court established by an Act of Parliament as well.

8. *A fortiori*, the judges of the **xxxxxx(name redacted)** High Court would come within the sweep of Section 14 of the Act of 2013 read with Section 2(1)(o) thereof. We say so also because, the definition of public servant in Section 2(1)(o) of the Act of 2013 explicitly excepts only one category of officials or public servants from the jurisdiction of the Lokpal from amongst the species mentioned in Section 14 of the Act of 2013, in respect of whom the jurisdiction is exercisable by any Court or other authority under the Army Act, 1950, the Airforce Act, 1950, the Navy Act, 1957 and the Coast Guard Act,1978. Concededly, the Act of 2013 does not provide for such explicit exception for the judges of the Court established by an Act of Parliament, including Judges of the Constitutional and other Courts established by an Act of Parliament – who must come

within the expanse sweep of sub-clause (f) of sub-section (1) of Section 14 of the stated Act.

9. However, before we proceed further, we are required to abide by the elucidation of the Constitution Bench of the Supreme Court of India in K. Veeraswamy (*supra*). The majority opinion ordains that to adequately protect a judge from frivolous prosecution and unnecessary harassment the President of India will consult the Chief Justice of India, who will consider all the material placed before him, tender his advice for giving sanction to launch prosecution or for filing FIR against the judge concerned after being satisfied in the matter, as opined by Justice B.C. Ray in paragraph 12 of the reported decision, while agreeing with the opinion of Justice K. Jagannatha Shetty for himself and Justice M.N. Venkatachaliah (as His Lordship then was). The two Judges, in paragraph 60 of the same reported Judgement, had observed as follows:

> "We therefore, **direct** that no criminal case shall be registered under Section 154, CrPC against a judge of the High Court, Chief Justice of a High Court or the judge of the Supreme Court unless the Chief Justice of India is consulted in the matter."
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> (emphasis supplied)

For the time being, we need not dilate on the slight divergence in the nature of direction given in the majority opinion. The thrust of the exposition of the majority view, is that no criminal case shall be "registered" against a judge of the High Court, Chief Justice of High Court or judge of the Supreme Court, unless the Chief Justice of India is consulted in the matter.

10. We are conscious of the fact that a complaint before the Lokpal cannot be *stricto sensu* equated with a criminal case being registered under Section 154 of CrPC or the corresponding provision in the Bharatiya Nagarik Suraksha Sanhita 2023 (for short, BNSS). However, considering the scheme of Section 20 of the Act of 2013, on receipt of a complaint and before the Lokpal decides to proceed further by ordering a preliminary inquiry by its inquiry wing or any nominated agency or investigation, it is required to examine whether there exists a prima facie case to proceed further. Such process inevitably involves a probe into the allegations against a Judge of the High Court. For effectuating preliminary inquiry, assistance of specified agency has to be taken who in turn is bestowed with an authority under Section 20 read with Section 27 of the Act of 2013, to obtain comments of the public servant and of the Competent Authority including do questioning of third persons and of official records of the courts, if the allegation against the public servant is concerning any judicial process.

Further, this inquiry is and would be a prelude to issue of direction to the investigating agency to register a criminal case against the named public servant and to investigate the same under supervision of Lokpal.

11. Having regard to the consequences emanating from the directions to be issued by the Lokpal under Section 20 of the Act coupled with the dictum in K. Veeraswami's case adverted hitherto, the appropriate course, *Ex abundanti cautela*, is to abide by the direction given by the majority view of the Constitution Bench of the Supreme Court and to approach the Hon'ble Chief Justice of India as a pre-condition or quintessence to the exercise of jurisdiction under Section 20 of the Act of 2013.

12. We are conscious of the fact that the allegation in this complaint also involves the named Additional District Judge, of State of **xxxxxx(name redacted)**, who is working in a court or body of judges which may have been established by an Act of the State Legislature. He may be a public servant within the meaning of Prevention of Corruption Act, 1988, but not directly amenable to the jurisdiction of the Lokpal - as not being a public servant within the meaning of Section 2(1)(o) read with Section 14 of the Act of 2013. However, eventually if an inquiry is to be ordered against the judge of the High Court, and in that inquiry any incriminatory material emerges against the named Additional District Judge, he can be prosecuted in this very action as being involved in an act

of abetting, bribe giving or bribe taking or conspiracy of any allegation of corruption under the 1988 Act, by virtue of sub-section (3) of Section 14 of the Act of 2013.

13. A priori, we deem it appropriate to forward the subject complaints and relevant materials received in the Registry in these two matters, to the office of the Hon'ble Chief Justice of India for his kind consideration.

14. Awaiting the guidance of the Hon'ble the Chief Justice of India, consideration of these complaints, for the time being, is deferred until four weeks from today, keeping in mind the statutory time frame to dispose of the complaint in terms of Section 20 (4) of the Act of 2013.

15. We make it amply clear that by this order we have decided a singular issue finally - as to whether the Judges of the High Court established by an Act of Parliament come within the ambit of Section 14 of the Act of 2013, in the affirmative. No more and no less. In that, we have not looked into or examined the merits of the allegations at all.

16. The Registry is directed to issue/upload copy of this order by redacting the name of the High Court and of the State including revelation of any description suggestive of giving identity of the

person involved, where-ever it occurs in this order, to maintain confidentiality as mandated by the Act of 2013 and the Rules framed thereunder.

Sd/-
(Justice A.M. Khanwilkar)
Chairperson

Sd/-
(Justice L Narayana Swamy)
Member

Sd/-
(Justice Sanjay Yadav)
Member

Sd/-
(Sushil Chandra)
Member

Sd/-
(Justice Ritu Raj Awasthi)
Member

Sd/-
(Pankaj Kumar)
Member

Sd/-
(Ajay Tirkey)
Member

(Court Master)

/SN/