

IN THE COURT OF THE
NAGALAND LOKAYUKTA

KOHIMA

Before

Justice Uma Nath Singh

(Former Chief Justice, High Court of Meghalaya)

Nagaland Lokayukta.

A.NLP No.07/2020

In re: ViccaS.Aye

v.

Y.Patton, Deputy Chief Minister, Nagaland

ORDER

(18-09-2020)

The impugned complaint registered as a Preliminary Enquiry was submitted by Shri ViccaS. Aye on 20-02-2020 against Shri Y.Patton, Deputy Chief Minister, Nagaland with the following allegations which are extracted from the Complaint:

1. *That I Shri. Vicca S. Aye an Indian citizen and resident of H/No. 165, 3rd Mile Chekiye Village, Block-2, Dimapur, Nagaland and I have full faith in constitution of India and the laws enacted thereunder.*
2. *That I am ordinary citizen, who, in the past tried to get a government job in Nagaland by looking for various job opportunities so that I could appear for various competitive exams to secure my life and livelihood guaranteed by the constitution of India. However, like many other unemployed youth of Nagaland, I was denied equal opportunities by the rampant nepotism and lack of transparency in functions of the Government in Nagaland.*
3. *That clearly the lack of transparency and arbitrariness in exercise in exercise of administrative discretion by public servants in Nagaland has lead to people losing faith in the Government.*
4. *That the public servants in positions of power have constantly and rampantly abused processes of power bestowed upon them to extend favours on considerations other than merit and transparency. This was always discussed in hushed voices in closed circles and the civil society also raised the voice but abuse was never so shameless as it is now.*
5. *"That I would like to bring to your attention the recent speech by Y. Patton, who is also the Deputy Chief Minister of Nagaland wherein he has stated from a public platform that he can manipulate the examination conducted by the Nagaland Public Service Commission which is a Constitutional body.*



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6. That as per the alleged speech, Y. Patton has proposed and offered to the candidate who can qualify the written exams to approach him for help at the interview stage.
7. That Y. Patton has also stated in his speech dated 28th January, 2020 that there is a practice of give and take practiced by and among other politicians in the state to give Government jobs. These are clearly offences under various sections of the Prevention of Corruption act besides other legal provisions. Clearly in his speech he speaks of using undue influence over people in position of power and these would result in accrual of undue advantages to him and others.
8. That obviously, when such give and take is practiced, there is total lack of transparency, abuse of discretion and lack of due process besides denial of opportunities to the citizens. The element of exercise of undue influence is writ all over his functioning as a public servant within the meaning of the PC Act.
9. That since abuse of power by Y. Patton has eroded the trust of the public in governance and is clearly also mal-administration by all means and invites the jurisdiction of Lokayukta Nagaland.
10. That since the Government jobs are being offered to only a select few, without transparency or prior advertisement of the vacancies, it is also a corrupt practice within meaning of the Prevention of Corruption Act. Needless to say that while there are allegations of monetary corruption in lieu of jobs, there is definite element of "pecuniary benefits" and "undue advantages" accruing to the public servants including Mr. Patton in this case. These pecuniary benefits and undue advantages are not quantifiable in monetary terms but definitely are discriminatory and give an unfair advantage to the Minister in charge, vis-a-vis his opponents during elections. Though not proven, there are widespread allegations that elections in Nagaland are very costly with candidates openly distributing money for securing votes or even promising jobs or making job offer to prospective voters. These are electoral malpractices but also qualify as offences under the Pc Act.
11. That the public servant involved in this case Mr. Patton has been the Minister looking after the Home Department and police and related portfolios for the past 7 years with a short break in between. Even during his previous stint, Mr. Patton had involved in rampant and



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unfettered abuse of administrative discretion and favoritism and also in interfering in normal administrative functioning of the police department by directly summoning the appointing authorities and writing to them to appoint candidates of his choice to various posts in the Nagaland Police. Hardly any open recruitment procedures through advertisements were conducted, except possibly for the special ENPO recruitment.

12. *That information/evidence pertaining to these abuse of power would be available with the Unit Commanders and the PHQ and the Unit Commanders in the past and even now would testify to being pressurized and coerced to follow the instructions from the Minister.*
13. *The exercise of undue influence by Mr. Patton is also evidenced by the fact that in the recent concluded session of the Nagaland Legislative Assembly, he squarely put the blame on the SPs and Commandants for making almost 1135 appointments in the police department during 2018-2019. It may be reiterated that none of these posts were advertised except 2016 Constables and 35 ASI/Sis. The existence of these vacancies was deliberately hidden from public view so that through the abuse of authority and undue influence, the public servant concerned- Mr. Patton and other senior officers like DGP etc could bestow favours on persons known to them, in contravention of constitutionally enshrined principles of equality. Even if any notifications or orders were issued, the same were not to ensure equality but to enhance the arbitrariness of the public servants by giving a slip to transparency. Copies of information provided by the Deputy CM Mr. Y. Patton on the floor of the house (as published in the local newspapers) are attached for reference. It is also known and speculated that in furtherance of the exercise of undue influence and arbitrary abuse of power, the PHQ recommended appointments to various posts based on recommendation letters of the Deputy CM Mr. Y. Patton and other public servants, which clearly shows abuse of power, use of undue influence and also substantiates his utterance of mutual give-and-take and trade offs with other colleagues which bestows undue advantages on certain people, to the exclusion of others.*

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14. That while some information about these backdoor appointments was obtained by various civil society organizations under RTI, the fact pertaining to backdoor appointments can be verified from administrative records at the PHQ as well as in the various Units of the Police department.
15. That after his current victory, in a thanksgiving speech in April 2018, in his Constituency, Mr. Patton had openly stated that he had provided jobs to almost 1500 persons in police and that he will again provide jobs to almost 2000 persons. During the said address, he had also mentioned that those who had not voted for him would not be given jobs/favours. Clearly these are corrupt practices and abuse of authority by any stretch of imagination and are covered by PC Act.
16. That it is also a known fact that Mr. Patton is known to have scant regard for administrative procedures or regulations and that since march 2015, the Nagaland Police has continued to employ personnel in excess of the actual sanctioned strength of the police department. The number of excess personnel have mostly been appointed at his behest and coercion, causing widespread losses to the State exchequer only to benefit an individual-Mr. Patton in this case who is the fountain head of corruption and mal-administration in the Home department. These excess appointments by backdoor channels have varied in number from 1200-2700 at various times during the past 7-years.
17. That evidence pertaining to all these abuse of discretion are available in the department, the Ag office and the concerned treasuries.
18. In another known instance published in the media, it was alleged that Mr. Patton had misappropriated by forgery an official vehicle – a Fortuner and got it registered in the name of his son, from virtually the date of its procurement. This case was registered but was withdrawn after Mr. Patton became the Deputy CM and in-charge of Home Portfolio.
19. That in this particular instance where Mr. Patton has openly stated that he is capable of manipulating the NPSC exams and has a mutual give-and-take with other ministers is just a grim reminder of his ability to abuse his position and subvert administrative regulations and orders and the laws of the land and the Constitution with impunity.
20. That earlier there did not exist any trustworthy mechanism in the State to address these issues. The Police department was under him and thus was did not enjoy the trust of the people.



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However, after the passing of the Lokayukta Act in Nagaland and the body becoming functional, the public has high hopes that the maladministration had corruption by public servants in high places would be addressed without fear or favour.

21. That the Hon'ble Lokayukta is requested to kindly;

(a) Institute an inquiry/investigation against the misdeeds and abuse of powers by Mr. Patton;

(b) Institute an inquiry/investigation into the maladministration prevailing in the Police and Home department.

(c) Issue appropriate directions to the Chief Secretary, the Home Commissioner and the DGP Nagaland to prevent them from further aggravating the situation. Such directives may also cover, inter alia, but not be limited to seeking approval of the Lokayukta before any further vacancies in the department are filled up either by way of transfers or promotions or retirement or resignations or otherwise.

22. Since Mr. Patton is a serving Deputy Chief Minister in the State and is likely to use his influence and power to dictate the course of investigation, it is requested that the Lokayukta may consider that the investigation may be conducted by Central Bureau of Investigation (CBI) or someone of impeccable credentials and integrity."

The Complainant has given some general instances in order to raise a suspicion about the commission of mal-practices by the Deputy Chief Minister but without the support of even a basic or prima facie evidence. As the motive behind lodging the complaint seemed to be opaque and the attempt hasty, made without doing any home work and collecting any prima facie evidence or supporting material to show any overt act on the part of the Deputy Chief Minister to connect him with the allegations, on a discreet inquiry from some officers of the Lokayukta Organisation about the antecedents of the complainant, it came to the notice that he is one of the vice presidents of the youth wing of the NDPP, the present ruling party of Nagaland whereas the Deputy Chief Minister is a senior member of the BJP. The complainant has used strong words in making serious allegations against Mr. Patton, the Deputy Chief Minister of Nagaland, so much so that he has gone to the extent of alleging that Mr. Patton being the Home Minister can influence and dictate the course of investigation. In view of these assertions and also an unusual fact that the allegations have come from an office bearer of the NDPP, the ruling political party of the Chief Minister, it was decided to take notice of the complaint and register a preliminary enquiry.



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The complainant has prayed for assigning the investigation to the CBI or somebody of impeccable antecedents and integrity.

As regards the utilisation of services of any officer or investigation agency of the Central Government by the Lokayukta, it would be necessary to require the consent of the Central Government as provided in Section 17(1)(b) of the Nagaland Lokayukta Act, 2017 (for short 'the Lokayukta Act'). Moreover, it may not be out of place to notice that in view of increasing demands for use of CBI under the above provision by the people of Nagaland and also the fact that the Central Bureau of Intelligence and Investigation are provided in Entry 8 of the Union List of the Constitution and thus, the Parliament is competent to make legislation in respect of utilising the services of these Agencies, whereas this has been provided in the state Lokayukta Act by the state Legislature, the Governor of Nagaland may have to refer the Nagaland Lokayukta Act, 2017 to the Central Government for a formal approval under Article 254 of the Constitution. It is not evident from the text of the Lokayukta Act that it was ever referred to the Central Government on this issue in the past. This may be needed for a clarification so that in the case of utilisation of services of any officer or investigation agency of the Central Government, no one should be able to raise an objection to the competence of the Authority utilising the services and the central investigation agency conducting the inquiry or investigation particularly by raising the issue of repugnancy of the state made law as provided in Article 254 of the Constitution. Though the state Lokayukta Act was enacted four years later, in 2017 after the enactment of 'The Lokpal and Lokayukta Act, 2013' by the Parliament after seeking the consent of the states but that nevertheless, it would be advisable to seek a formal approval of the Central Government for utilising the services of the central investigation agencies. The Governor of Nagaland may also take up the requirement of general permission of the Central Government for the Lokayukta to use central investigation agency in appropriate cases where the inquiries/investigations involve the complaints about misappropriation and misuse of the Central Government's funds allocated for centrally sponsored schemes and projects. Section 17 of the state Lokayukta Act that empowers the Lokayukta to utilise the services of any officer or investigation agency of the Central Government provides as follows:

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"Section -17 :Utilization of services of other persons. (1) The Lokayukta or Upa-Lokayukta *in addition to the officials of Lokayukta* may for the purpose of conducting a preliminary inquiry or an investigation under this Act, utilize the services of:

(1) Any officer or investigation agency of the State Government with prior intimation to the competent authority of the State Government:

(a) *Any officer or investigation agency of Central Government, with the consent of that Government.*

(1) Any officer, agency or person whose services are utilized under sub-section (1) may, subject to the direction and control of the Lokayukta or Upa-Lokayukta, as the case may be:

(a) Summon and enforce the attendance of any person and examine him;

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

(c) Requisition any public record or copy thereof from any office.

(2) The officer, agency or person whose services are utilized under sub-section (1) shall enquire into the matter and submit a report to the Lokayukta or Upa-Lokayukta, as the case may be, within such period as may be specified by him in this behalf.

(3) Any officer agency or person whose services are utilized under sub-section (1) shall act under the directions of the Lokayukta or Upa-Lokayukta, as the case may be, and they may be paid such remuneration and expenses as may be allowed by the Lokayukta or Upa-Lokayukta, as the case may be.

Thus, it is clear from the reading of the heading of Section 17 above that the utilization of services of any officer or investigation agency other than the officers of the Lokayukta organisation for inquiry or investigation, would be called "*Utilization of services of other persons*" and for the utilization of services of the CBI, the consent of Central Government would be required.

The complainant has also made an alternative prayer that if it is not possible to utilize the services of the CBI, then the enquiry or investigation be conducted by "*someone of impeccable credentials and integrity*". Apparently, this complaint with bald allegations on affidavit without any prima facie material to support deserved to be rejected at the threshold. However, since the complaint has been made by an office bearer of the NDPP, the present ruling party of the Chief Minister against not less than the Deputy Chief Minister, and the State Government has failed to frame Nagaland Lokayukta Rules in consultation with the Lokayukta under section 32 of the Lokayukta Act, even



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after a lapse of over one and half year since 22-02-2019 when the Nagaland Lokayukta Act came in to operation, this complaint was processed for preliminary inquiry. Undoubtedly, Section 12(2) of the Act which deals with 'Investigation' provides for discretion to refuse 'inquiry' at any stage but in view of the fact that this discretion is available in a separate provision which deals with 'investigation' and which can start only upon registration of a regular case called R.C. by way of an FIR, the State Legislature would need to bring some suitable amendment in the Lokayukta Act or at least by way of clarification some express provision in the rules which is not yet framed so that the discretion which is provided in Section 12(b) is also made to apply in respect of Section 11 of the Act which contains the provisions for holding 'preliminary inquiry'.

Now, coming to the alternative prayer for assigning the inquiry to someone with impeccable credentials and integrity, having given an anxious consideration to the nature and content of complaint, it was deemed proper to entrust the inquiry in accordance with the provisions of Section 11 of the Lokayukta Act to a state functionary who could be acceptable to all for holding the preliminary inquiry without inviting any controversy or objection. Thus, upon considering the totality of circumstances, it was decided to give the inquiry to the Chief Minister under Section 11 which contemplates and contains the provisions for preliminary inquiry as under:

Section- 11 ;Provisions for holding preliminary inquiry.

The Lokayukta or Upa-Lokayukta, on receipt of a complaint or in case on his own motion, *may, before proceeding to investigate such complaint or case, make such preliminary inquiry or direct any other person so authorized to make such preliminary inquiry as he deems fit. If on such preliminary inquiry, he finds that there exists no such ground he shall record a finding to that effect and thereupon the matter shall be closed and the complainant shall be informed accordingly.*

(2)The procedure for verification in respect of a complaint under sub-section (1) shall be such as the Lokayukta or Upa-Lokayukta deems appropriate in the circumstanced of the case and he may, if he deems it necessary so to do, call for the comments of the public functionary concerned.

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In order to make the position further clear, the circumstances which led to assigning the preliminary inquiry to the Chief Minister of Nagaland can be enumerated as follows:

- (i) that the Chief Minister and the complainant belonged to one party namely the NDPP and the Deputy Chief Minister is a senior member of the BJP, a prominent constituent of the Nagaland Coalition Government;
- (ii) that it is alleged by the complainant that the Deputy Chief Minister can influence and dictate the course of investigation;
- (iii) that in the absence of Nagaland Lokayukta Rules, the conditions of service of the Nagaland Lokayukta Police are controlled by the Department of Personnel & Administrative Reforms presently under the charge of the Chief Minister;
- (iv) that as a police organization, the Nagaland Lokayukta Police is not free from the influence of the state Home Department particularly in respect of policy matters connected with the state police which is under the control of the Deputy Chief Minister who is also the Home Minister;
- (v) that the Lokayukta Police Organisation is not being headed by an IPS officer who like in other states ought not to be below the rank of DGP and who can resist any external influence or pressure;
- (vi) that the Deputy Chief Minister in his affidavit has submitted that the complainant belongs to the Sumi tribe whereas he belongs to the Lotha tribe and they are from different electoral constituencies. The complaint seems to be espousing the case of political opponents of the Deputy Chief Minister;
- (vii) that presumably, the decision to assign the PE to the Chief Minister, the official superior of the Deputy Chief Minister could satisfy the request of the complainant for inquiry/investigation by "Central Bureau of Investigation (CBI) or someone of impeccable credentials and integrity";
- (viii) that it was expected that rising above the local petty politics, the Chief Minister should strike a balance and without being influenced by the either, provide a correct picture as to why his own party man has submitted the complaint against his senior most cabinet colleague in his coalition Government.
- (ix) that the Chief Minister is one of the highest state constitutional functionaries, and presumably, his report should carry the credibility much higher than that of a police officer particularly in the peculiar circumstances of this case and that is also well within the scope of Section 11(2) of the Lokayukta Act.

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The Lokayukta has been given a freedom under the Lokayukta Act to adopt a procedure which he deemed fit for the verification of allegations of complaints. The Chief Minister was accordingly entrusted with the inquiry being the official superior of the Deputy Chief minister, who is also the Home Minister of Nagaland, and thus also the Minister in Charge of the State Police.

In the 1st order dated 20.02.2020, the Chief Minister was given time till 07-04-2020 to submit his report. However, on account of outbreak of pandemic COVID-19, the following order was passed on 19-03-2020 to implement the advisories issued to contain the pandemic :

" As a result of outbreak of COVID-19, declared as a pandemic and special advisories being issued by the Central and the State Governments like: to keep distance and stay self quarantined in case of doubt as a preventive measure, and further on account of dearth of adequate space in the chambers of the Lokayukta and the Upa-Lokayukta to accommodate the litigants in terms of advisories, I defer the hearing of all the cases listed on different dates from March, 2020 uptill April 13, 2020 at 12 O'clock. Let necessary intimation to that effect be sent to the parties concerned for information."

Thereafter, when the matter was listed on 07-05-2020, an application for adjournment dated 06-05-2020 for three months, signed by Mr. J. Alam, Additional Chief Secretary to the Chief Minister was submitted on the following grounds:

"3. That considering the issue involved the Hon'ble Chief Minister has referred the matter to the Advocate General, Nagaland.

4. That the Advocate General, Nagaland was supposed to come to Kohima in connection with the matter but due to the present pandemic/COVID-19 and also, the restriction of movement, he could not come"

Thus the case was adjourned by passing the following order: "On due consideration, the applications submitted on behalf of the Chief Minister of Nagaland and by the Deputy Chief Minister, for grant of 3 months' time are allowed and they are permitted to file the Report and Reply respectively before 11/09/2020. As the Chief Minister of Nagaland, in view of special facts and circumstances of the case, has been requested to act as Enquiry Officer under section 17 of the Nagaland Lokayukta Act, 2017, a copy of this order be sent to His Excellency the Governor of Nagaland (as per Section 17 (1)(a))"



Justice J. Alam

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Chief Justice, High Court of Meghalaya
LOKAYUKTA



CHIEF MINISTER'S OFFICE
NAGALAND, KOHIMA

No. CMN/21(C)/Lokayukta/2020
10th September, 2020

To

The Lokayukta,
Nagaland, Kohima

Sir,

As per letter No. A.-NLP-07/2020 dated, Kohima the 8th May 2020, the Inspector General of Police and Director, Nagaland, Lokayukta Police had forwarded the Case No. A.NLP-07/2020 from Lokayukta wherein the Hon'ble Chief Minister was permitted to file his report before 11/9/2020 in the matter of the enquiry to be conducted by him. However, due to heavy engagement the due process of enquiry could not be done and the report could not be filed in time.

Therefore, I am directed to request you to kindly grant some more time for the enquiry to be conducted by the Hon'ble Chief Minister

Yours faithfully,

(K.D Vizo)

Principal Secretary to Chief Minister



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Thus, in view of inordinate delay in conducting the inquiry and on account of repeated requests for adjournment, on behalf of the Chief Minister, sometime on the ground of non-availability of the Advocate General and some time on some other vague grounds with over-confidence which violated the mandate of judgments of the Supreme Court in the cases of (i) N.G. Dastane v. Shrikant S. Deshpande (2001) 6 SCC 135 and (ii) Doongar Singh v. State of Rajasthan (2018) 13 SCC 74, it was thought necessary to reserve the case for final order. In the case of N.G. Dastane, the Supreme Court has held that seeking frequent adjournments on frivolous grounds would amount to professional misconduct on the part of the Advocate under Section 35(1) of Advocates Act, 1961. In the instant case, the Advocate General has remained associated with the preliminary inquiry after the first order was passed on 20-2-2020 as is evident from the application for adjournment submitted by Mr. J. Alam dated 06-05-2020. Moreover, while adjourning the case, in order to facilitate the appearance of the Advocate General and to provide him sufficient time during the pandemic, instead of granting 3 months' time, he was given 4 months to give his legal advice to the Chief Minister so that the Chief Minister could submit his report before the next date of hearing. Similarly, in the case of Doongar Singh, the Supreme Court has strongly deprecated adjournments in important matters. In the instant case, a complaint has been made against the Deputy Chief Minister and the Chief Minister has been assigned the inquiry.

However, before considering the case on merit, it would be appropriate to give a brief sketch of the socio-economic conditions of the state and also notice the conduct of parties responsible for causing delay in disposal of this matter. Nagaland is a tiny state on the international border with Myanmar (Burma). It has a small population of about 25 lacs and has been declared a disturbed area under the Armed Forces (Special Powers) Act, 1958. Being a Special Category State, it is entitled to a 90:10 (90% central contribution and 10% by the state) assistance on most of the Central Government's schemes and projects. However, despite the huge amount of money sent by the Government of India for developments in the state and welfare of the native population, the majority of the native population is living below the poverty line and struggling for survival. Corruption in public administration has ceased to be an issue and unfortunately it has even earned the sympathy of people all over who have no knowledge about the socio-economic condition of the state and who simply believed in propaganda spread with vested interests by the people who are a product of the spoils system and who are treating the state as a greener pasture.

As stated, Nagaland is mainly dependent on central funds because the state has not yet exploited its resources and developed any independent dependable source of income. It has probably not even thought of opening for industrial developments. Presently, the state polity is generally accused of committing two types of corruption, namely (1) illegal/back door appointments for extraneous consideration and (2) misappropriation and misuse of public funds, say Central Government's funds. The instant complaint is also based on suspicion of committing malpractices/corruption of these kinds.



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As mentioned above, the Chief Minister of Nagaland was appointed to conduct this enquiry in the special facts and circumstances of the case but disappointingly, he has failed to assist the Lokayukta for the reasons best known to him. However, his conduct leaves a wide scope to draw some inferences short of his stature as under:

- (i) that the Chief Minister seemed to have been avoiding to sign the applications for adjournments probably under some wrong advice that if he signed any paper, he might land in trouble and face some unforeseen legal proceedings. Needless to say that an advice should be legally as well as ethically sound. As pointed out above, one application for adjournment has been signed by Mr. J. Alam, Addl. Chief Secretary to the Chief Minister and the other by his principal Secretary Mr. Vizo. The Nagaland Lokayukta Organisation has been set up primarily with two objectives, namely to maintain transparency in the public administration and to follow the principle of Natural Justice. The institution of Lokayukta is not meant to implicate or placate any person. Let the people of the state not be misled and misguided by any unscrupulous opinion of their advisors with half baked knowledge.
- (ii) that the Chief Minister, being the Head of the State Government, should have risen above local petty politics and dispelled the impression that inquiry has been delayed to suit some political expediency.
- (iii) that the Chief Minister has at no stage taken any objection to compliance of the order or raised any other plea to show his unwillingness or inability to conduct the inquiry. However, by ignoring to conduct the preliminary inquiry with all the means at his command and all the records under his control, he has left a wrong impression that he keeps a veiled contempt for the Rule of Law.

As regards the complainant, it would be relevant to note

- (i) that he has filed the complaint in haste and without doing any home work.
- (ii) that he has failed to produce any basic incriminating material, or a prima facie evidence to prove his allegations.
- (iii) that he is one of the vice presidents of the youth wing of the present ruling political party, called the NDPP to which the Chief Minister also belongs.
- (iv) that he has not shown his eligibility and intention to seek employment in the state police force.
- (v) that he has not applied under RTI to collect any relevant information relating to police recruitments in question
- (vi) that he has not stated in his complaint that he had approached any Authority for the redressal of his grievance.
- (vii) that his averments in the complaint are non-specific and omnibus.
- (viii) that if the police authorities have relied on the Police Manual, to show the power of recruitment, then the complainant should have questioned their authority in the wake of well known Judgments of the Supreme Court in the case of Uma Devi before the Supreme Court or the High Court which have powers to quash the offending provisions of the Manual, if in conflict with the law declared by the Supreme Court.



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(ix) that he has failed to bring his grievance to the notice of the Governor of Nagaland who has been given special responsibility with respect to law and order in the state under Article 371A(1)(b) of the Constitution of India and the state police being the law enforcing agency is directly related to the exercise of carrying out such responsibility.

The Supreme Court in the case of Nabam Rebia & Bamang Felix v. Dy. Speaker, Arunachal Pradesh Legislative Assembly (2016)8SCC1 while discussing the special responsibility of Governor in para 325 of the judgment has held: The second category of functions consists of the Governor acting in his individual judgment. This was not provided in the Constitution as originally enacted but was introduced by way of an amendment in Article 371-A(1)(b)[pertaining to Nagaland] and Article 371-H(a)[pertaining to Arunachal Pradesh]. Though under the above provision, the special responsibility of the Governor is limited to law and order but the state police being an agency of the Governor for enforcing 'the special responsibility' has to be fully suited to the requirements of the task of carrying out special responsibility by the Governor to his satisfaction which he can decide himself in exercise of his individual judgment. Thus, the entire exercise connected with reorganisation, reforms and revamping including recruitment and all other miscellaneous matters like uniform and weapons etc in respect of the Nagaland State Police Force of any description with any badge including the sister police organisation (which can also be deployed in emergency) has to be undertaken only with the prior approval of the Governor of Nagaland and any deviation from its strict compliance should have to be dealt with by instituting some suitable civil and criminal proceedings.

In so far as the conduct of the Advocate General for Nagaland in this case is concerned, it would be relevant to note his commissions and omissions as follows:

(i) that as per application dated 06-05-2020 submitted by Shri J. Alam, Additional Chief Secretary to the Chief Minister, he sought the adjournment on the following grounds:

"3. That considering the issue involved the Hon'ble Chief Minister has referred the matter to the Advocate General, Nagaland.

4. That the Advocate General, Nagaland was supposed to come to Kohima in connection with the matter but due to the present pandemic/COVID-19 and also, the restriction of movement, he could not come"

Nagaland a poor tribal state can not afford to await the arrival of its Advocate General from Delhi. He has to be in Nagaland or else he should now show mercy on the state and quit the assignment and make room for the local lawyers in waiting.



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If the Governor and the Chief Minister can travel frequently to Delhi, then why not the Advocate General who may be much younger to them.

(ii) that there is a general complaint that if the state government wants to delay any matter, it simply refers the case to the AG in Delhi who sits over such files for months and in some cases over a year. May be, the file of the Deputy Chief Minister was also referred with such motive to the A.G.

(iii). Article 165 of the Constitution which governs the appointment and duties of the Advocate General for the State reads as:

"(1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate General for the State.

(2) *It shall be the duty of the Advocate General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor*, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) The Advocate General *shall hold office during the pleasure of the Governor*, and shall receive such remuneration as the Governor may determine."

Thus the Advocate General shall be duty bound (i) to give advice to the Government of the State upon such legal matters; (ii) to perform such other duties of a legal character; (iii) as may from time to time be referred or assigned to him by the Governor.

Ironically, the *seat of Nagaland State Government* which is to receive the legal advice is *in Kohima*, the Governor who is to refer and assign the legal works from time to time (*in case of urgency with special responsibility with respect to law and order under Article 371A(1)(b) at any time*) is *in Kohima* but the Advocate General who is under duty to give the advice on legal matters and perform other duties of legal character is **based in Delhi**.

(iv) that there is a general complaint that visits to Delhi on the pretext of seeking Advocate General's legal opinion by the government servants and in particular by the officers of State Law Department at the cost of public exchequer have become a regular feature. Though the Lokayukta has to keep the source of information absolutely secret under Section 20 of the Lokayukta Act but he also has to keep his eyes and ears open. An scrutiny of office files and records of TA/DA and all other payments made by the Treasury Department in respect of the officers going on official tours can show the amount of burden on the state exchequer and this may also be a case of 'Mal-administration' under Section 2 (1) (k) of the Nagaland Lokayukta Act, 2017 which reads as follows:



Justice

JUSTICE MA NATH SINGH
Former Chief Justice, High Court of Meghalaya
NAGALAND LOKAYUKTA

" (k) "Mal-administration" means actions taken or purported to have been taken or failed to have been taken, where such action or failure is unreasonable, unjust, oppressive or improper or discriminatory or with undue delay or negligent or distortive of procedures, practices etc., governing such actions"

(v). that it is said that the present Advocate General though based in Delhi has continued in office for over a decade except for a couple of years when the present Chief Minister was out of power in Nagaland. All the past appointment letters were not readily traceable, however, three such Notifications in respect of his present tenure which are shown to have been issued under the orders of the then Governor of Nagaland have been made available. The corresponding office files wherein the Governor has given his approval could not be called for want of time but these three Notifications issued within a brief period of 8 months also suggest some indiscreet bestowal of government favours. These three Notifications are given herein below:

(1st Notification dated 14th March,2018)

**GOVERNMENT OF NAGALAND
DEPARTMENT OF JUSTICE AND LAW
NAGALAND :: KOHIMA**

NOTIFICATION

Dt Kohima, the 14th March 2018

NO. LAW-100/75(Pt),In continuation of this Department's Notification of even number dated 14/03/2018 and in exercise of the powers conferred by Article 165(3) of the Constitution the Governor of Nagaland is pleased to specify the terms and conditions of the appointment of Shri. K.N. Balgopal as Advocate General Nagaland w.e.f 14th Mar. 2018.



Justice
JUSTICE UMA KATH SINGH
(Former Chief Justice, High Court of Meghalaya)
NAGALAND LOKAYUKTA

- 1.(i) Retainer fee thousand)only per : Rs. 25,000/- (Rupees twenty five month
- (ii) Appearance fee : Rs. 5,000 /- (Rs. five thousand) only per diem for appearance in the Supreme Court or any High Court in the Country.
- iii. Performing duties of legal Character outside Delhi : Rs. 10,000/- (Rupees Ten thousand) only
- iv. Settlement of affidavit, etc., Including conference :Rs. 4,000/- (Rupees four thousand) only
- v. T.A. : Air fares/train fares/Bus on actual basis
- vi. Daily allowance : As admissible to a Government servant of Sr. Grade
- vii. Telephone facility : Reimbursement of Telephone bill at Delhi not exceeding Rs. 1,500/- only per month
- viii. Conveyance facility : Vehicle maintenance allowance @ Rs. 1,500/- only per month and 80(eighty) litres of POL per month
- ix. Accommodation : Free furnished accommodation at Kohima. While on official duty if accommodation is not available at Nagaland House, Guwahati, reimbursement of Hotel charges.
- x. Any other allowances that may be declared in favour of him by the Government from time to time.

2. The expenditure is debitable to the Head of Account '2014 Admn of Justice' 114(1)

Advocate General/ Standing Counsel and Govt. Advocates.

3. This is a Non-Plan expenditure.

4. This issues with the concurrence of the Finance Department conveyed vide their RFC/estt/4/8

Dt. 16/6/2015.

Bo Singh
 JUSTICE UMA NATH SINGH
 (Former Chief Justice, High Court of Nagaland)
 NAGALAND LOKAYUKTA



(18)

5. The Advocate General shall discharge such duties and functions assigned to him as provided in the Annexure appended herewith

Sd/- PANKAJ KUMAR
Chief Secretary to the Govt. of
Nagaland

NO. LAW-100/75(Pt),

Di Kohima, the 14th March 2018

Copy to,

1. The Principal Accountant General, Nagaland, Kohima.
2. The Principal Secretary to Governor of Nagaland, Raj Bhavan, Kohima.
3. The Commissioner & Secretary to Chief Minister, Nagaland, Kohima.
4. The OSD to Chief Secretary, Nagaland.
5. The Advocate General, Nagaland.
6. The Registrar, Guwahati High Court, Kohima Bench, Kohima.
7. The Commissioner, Nagaland, Kohima.
8. All Addl. Chief Secretaries/Principal Secretaries/ Commissioner & Secretaries/ Secretaries, Nagaland, Kohima.
9. The Sr. Addl. Advocate General, Guwahati High Court, Kohima Bench, Kohima, Nagaland.
10. Guard file/Office copy.

It appears that the Governor of Nagaland has settled the terms and conditions vide the notification dated 14th March, 2018 and the Notification dated 17 April, 2018 gives the impression that a further Notification dated 24th March, 2018, was issued in respect of his appointment.



Justice Uma Nath Singh
JUSTICE UMA NATH SINGH
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NAGALAND LOKAYUKTA

Strangely enough, vide the following Notification issued after one month, the Advocate General was given a Cabinet Status with Headquarters at Delhi retrospectively with effect from 14th March, 2018 when he was not even appointed as the Advocate General on that date and the Notification was issued in the name of Governor. Should it be called a manipulation or a reckless and casual way of functioning in state government's offices ?

(vi) that there are some Naga Advocates on the government side as Sr. Additional AG/Addl AG in Kohima who can be rated fairly good. However, in case the state government does not have confidence in their professional competence for appointment as the AG, then there are very competent Advocates in Gauhati, Tripura, Manipur and Meghalaya Bars in the North East. Even the Calcutta Bar is not that far and not as expensive as maintaining the Advocate General in Delhi. What is more important is that the AG should ordinarily be available in Nagaland and in case he has to go outside, he should give an intimation to the Governor. In comparison with other states, the volume of litigation of Nagaland in the Supreme Court is just the paltry which can be handled by its Advocate on record. The Advocate Generals of other states rarely leave the States/Headquarters. Moreover, the state can also maintain a panel of Sr. Advocates who can be engaged in serious matters for a reasonable fee. The Supreme Court in the case of M.T. Khan & Ors v. Government of A.P. & Ors (2004) 2 SCC 267 has held that an Additional Advocate General can not be appointed under Article 165 of the Constitution, nor can he perform the constitutional and statutory functions of the Advocate General. Thus, the Advocate General can not say that if some states have appointed Additional Advocate Generals for the Supreme Court, he as the Advocate General can also keep his Headquarters in Delhi or the Additional Advocate Generals functioning at Kohima and Gauhati can look after the constitutional and statutory duties of the Advocate General.

(vii) that vide the 3rd Notification dated 13th November, 2018 issued just after six months, the retainer fee has been raised from 25,000/- to 1,50,000/- per month and the consultation fee has been fixed for



Justice Uma Nath Singh
 JUSTICE UMA NATH SINGH
 (Former Chief Justice, High Court of Meghalaya)
 NAGALAND LOKAYUKTA

Rs.1,25000/ per month with all other perquisites including a free furnished centrally located accommodation in Kohima which is hardly occupied by him even for a month in a year. Moreover, none of the Notifications has created any restriction on his private practice, not even a bar that his juniors can not accept briefs against the state of Nagaland. And that may be the main reason as why the opinion files of the state government remain unattended for months and some cases for over a year. The 2nd and 3rd Notifications are given as follows:

(2nd Notification dated 14th March,2018)

**GOVERNMENT OF NAGALAND
DEPARTMENT OF JUSTICE & LAW
NAGALAND :: KOHIMA**

NOTIFICATION

Dated Kohima, the 17th April, 2018

No. LAW-100/75(Pt) :: In partial modification to this Department's Notification of even number dated 24th March 2018, the Governor of Nagaland is pleased to appoint **Shri. K.N. Balgopal** Senior Advocate in the Supreme Court of India as Advocate General, Nagaland with Cabinet Status, Headquarter at New Delhi with effect from 14.03.2018.

Sd/- **TEMJEN TOY**

Chief Secretary to the Govt. of
Nagaland.

Justice Uma Nath Singh
JUSTICE UMA NATH SINGH
(Former Chief Justice - High Court of Meghalaya)
NAGALAND LOKAYUKTA



an

No. LAW-100/75(Pt)

Dated Kohima, the 17th April, 2018

Copy to,

1. The Principal Accountant General, Nagaland, Kohima.
2. The Principal Secretary to Governor of Nagaland, Raj Bhavan, Kohima.
3. The Commissioner & Secretary to Chief Minister, Nagaland, Kohima.
4. The OSD to Chief Secretary, Nagaland.
5. The Advocate General, Nagaland.
6. The PPS/PS to all Ministers of Nagaland.
7. The Registrar General of the Supreme Court of India.
8. The Registrar General of the Guwahati High Court, Guwahati, Assam.
9. The Registrar, Guwahati High Court, Kohima Bench, Kohima.
10. The Commissioner, Nagaland, Kohima.
11. All Addl. Chief Secretaries/Principal Secretaries/ Commissioner & Secretaries/ Secretaries, Nagaland, Kohima.
12. The Commissioner & Secretary, Nagaland Legislative Assembly, Kohima.
13. The Chief Resident Commissioner, Jt. Resident Commissioner, Deputy Resident Commissioner, Delhi/Kolkata/Shillong/Guwahati.
14. All Deputy Commissioners in Nagaland.
15. All Principal District & Session Judge, District & Session Judge/ Chief Judicial Magistrate/ Civil Judge(Jr), Nagaland.
16. All PPs/ Addl. PPs/ Asst. PPs, Nagaland.
17. The Sr. Addl. Advocate General/ Addl. Advocate General – cum- Standing Counsel/Senior Govt. Advocate/ Addl. Sr. Govt. Advocate/ Jr. Govt. Advocate/ Standing Counsels of the Supreme Court of India.
18. The Publisher, Nagaland Gazette, Kohima for publication.
19. Guard file/Office copy.

(KHANRINLA T. KOZA)

Secretary to the Government of
Nagaland



[Handwritten signature]
JUSTICE UMA NATH SINGH
(Former Chief Justice, High Court of Meghalaya)
NAGALAND LOKAYUKTA

(3rd Notification dated 13th November, 2018)
GOVERNMENT OF NAGALAND
DEPARTMENT OF JUSTICE & LAW
KOHIMA

NOTIFICATION

Dated Kohima, the 13th Nov, 2018

NO.LAW-100/75(Pt-1) In continuation of this Department's Notification of the even dated 14/03/2018 and in exercise of the power conferred by Article 165(3) of the Constitution, the Governor of Nagaland is pleased to specify the terms and conditions of the appointment of Shri. K.N. Balgopal as Advocate General Nagaland w.e.f. 14th Mar, 2018.

- | | |
|--|--|
| 1.(i) Retainer fee | Rs. 1,50,000/- (Rupees one lakh fifty thousand) only per month |
| (ii) Consultation fee | Rs. 1,25,000/- (Rupees one lakh twenty five thousand) only per month |
| (iii) Performing duties of legal Character outside Delhi | Rs. 10,000/- (Rupees Ten thousand) only per day |
| (iv) T.A. | Air fares/train fares/Bus on actual basis. |
| (v) Telephone facility | Reimbursement of Telephone bill at Delhi not exceeding Rs. 1,500/- only per month. |
| (vi) Vehicle maintenance allowance | POL 80 ltrs, & Rs. 1,500/- per month |
| (vii) Accommodation | free furnished accommodation at Kohima. Reimbursement of Hotel charges while on official duty if accommodation is not available at Nagaland House, Guwahati. |
2. The expenditure is debited to the Head of Account 2014 Admn of Justice 114(10 Advocate General/Standing Counsel and Govt. Advocates.
 3. This is a Non-Plan expenditure.
 4. This issues with the concurrence of the Finance Department conveyed vide their RFC NO 429 dated 12/11/2018.
 5. The Advocate General shall discharge such duties and functions assigned to him as provided in the Annexure appended herewith

Sd/-

R. BINCHILLO THONG, IAS
 Chief Secretary to the Govt. of
 Nagaland.



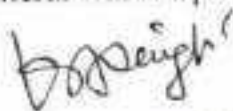
[Handwritten Signature]
 JUSTICE LOKANATH THONG
 Former Chief Justice, High Court of Meghalaya
 NAGALAND LOKAYUKTA

Copy to,

1. The Principal Accountant General, Nagaland, Kohima.
2. The Principal Secretary to Governor of Nagaland, Raj Bhavan, Kohima.
3. The Commissioner & Secretary to Chief Minister, Nagaland, Kohima.
4. The PPS to Chief Secretary, Nagaland for information.
5. Shri. K.N. Balgopal, Advocate General, Nagaland.
6. The Registrar, Guwahati High Court, Kohima Bench, Kohima.
7. The Commissioner, Nagaland, Kohima.
8. All Addl. Chief Secretaries/Principal Secretaries/Commissioner & Secretaries/Secretaries, Nagaland, Kohima.
9. The Sr. Addl. Advocate General, Guwahati High Court, Kohima Bench, Kohima, Nagaland.
10. Sr. Treasury Officer, Kohima (North)
11. Guard file/Office copy.

(RHONTHUNGO ANDREAS)Under Secretary to the Govt. of
Nagaland.

(viii) that under Section 32 of the Nagaland Lokayukta Act, 2017, the state government has powers to frame Rules connected with Nagaland Lokayukta Organisation in consultation with the Lokayukta. The present ruling party of Nagaland was in opposition when the Act was enacted and perhaps, had it been in power, it would have fought tooth and nail against any such move. As usual the Advocate General got the file for drafting the Rules referred to him and has been sitting over it for the past over one and half year waiting for Lokayukta to leave the organisation so that the state Government can create new posts and make illegal appointments through backdoor for extraneous consideration. In the absence of Rules the Lokayukta Organisation was on the verge of close down, when the Lokayukta has to issue Regulations to cover all the essential areas by over-stretching his regulation making powers under Section 33 of the Act. The service conditions of erstwhile Nagaland Vigilance police and other staff which have merged into the Nagaland Lokayukta Organisation under Section 36 are very much uncertain in the absence of their Service Rules. So is the position regarding the Investigation Rules where as the Advocate General only on the strength of his proximity to the Chief Minister has become the Super Chief Minister and virtually driven the State Anti-Corruption Ombudsman to a position of close down. It is a million-dollar question as to whom does the Advocate General want to protect from inquiry or investigation of the Lokayukta ??



JUSTICE UMA NATH SINGH
(Former Chief Justice, High Court of Meghalaya)
NAGALAND LOKAYUKTA



(viii) that as held in the case of *B.P. Singhal v. Union of India*: (2010) 6 SCC 331 by a five Judge Constitution Bench of the Supreme Court, for the appointment of Attorney General and Advocate General, the doctrine of pleasure is to apply. Their appointments are done at the pleasure of the President of India and the Governor. In the case of their removal, the scope of exercise of Judicial Review is virtually nil. They do not subscribe an oath of allegiance to the Constitution and the loss of confidence of the Governor in the Advocate-General could be a sufficient ground for his removal from the office and the Governor is not required to assign any reason. In view of the above, Should the Advocate General command the confidence of the Governor and the State Government?

(ix) that it is recommended that in view of the above conduct of Shri K.N. Balgopal, Advocate General, the Governor of Nagaland may consider to withdraw his pleasure extended for the appointment of Mr. Balgopal as the AG of Nagaland under Article 165 of the Constitution and direct him to return all the files sent for legal opinion in respect of the affairs of the Nagaland Lokayukta Organisation forthwith, and may also consider to divest him of the membership of all the committees connected with this Organisation.

Mr. Y. Patton, Deputy Chief Minister of Nagaland, against whom the complaint has been submitted has filed his reply as under

1. That I have been furnished with a copy of the Order dated 20.02.2020 passed by the Hon'ble Nagaland Lokayukta in File No. NLP/SF/08/2020. Along with the said Order, I have also received a copy of the complaint against me, filed by one, Shri. Vicca S. Aye. The complaint is signed, 19.02.2020 and supported by an affidavit of even date, both shown executed before a Notary Public, with registration Nos. 4/2020 and 3/2020, respectively. Interestingly, the affidavit in support is shown registered prior in point of time in relation to the complaint it purports to support.
2. That I have noted the contents of the complaint and as directed by the Hon'ble Nagaland Lokayukta, I beg to file my replies to the allegations contained therein.
3. That at the very outset, I humbly submit that as a representative of the people, I have endeavored to serve diligently and to the best of my ability. As a public functionary, I have been guided by the duties and responsibilities enjoined upon me by the Constitution of India and the laws framed thereunder. I say that the complaint filed against me by the aforesaid Shri. Vicca S. Aye contains allegations which are baseless and false. The said complaint is ex-facie motivated and mala fide.



Justice Uma Nath Singh
 JUSTICE UMA NATH SINGH
 (Former Chief Justice, High Court of Meghalaya)
 NAGALAND LOKAYUKTA

4. That according to the public records, the real name of the complainant is Vikato S. Aye. He was appointed as a Primary Teacher by Order No. ED/EL/NL/APPT/2006-07 dated 09.09.07. The said order shows that he was not appointed on the basis of a selection process. In this regard, the records of the erstwhile Vigilance Commission, in relation to the appointment of bogus teachers may be called for and referred to. The records also show that he submitted his resignation in the year 2017 and the same was accepted by Order No. ED/EL/NL/APPT/2/2013 dated 20.11.17. Pertinently, another person has been appointed in his place.

Copies of the order dated 09.09.07 and 20.11.17 are hereto annexed and marked as ANNEXURES A& B.

5. That in addition to the above, it appears that the Complainant is a person of interest/accused in relation to the 5th March 2015 lynching incident at Dimapur. He is also being investigated for false statements/allegations published by him in the social media.
6. That the antecedents of the complainant as referred to above, reduces to abject mockery, his averments in paragraphs 1 and 2 of the complaint. His averments claiming denial of opportunities, "rampant nepotism and lack of transparency" are denied. The absurdity of these claims are established by the complainant's own antecedents. That apart, the suppression of material facts and the resort to falsehoods, indicates the malafide intent of the complainant.
7. That the statements in paragraphs 3 and 4 of the complaint are vague and omnibus in nature. I categorically deny the allegations in these paragraphs and I say that the complainant is acting most irresponsibly, for selfish, motivated and personal interests.
8. That the statements in paragraphs 5, 6, 7, 8, 9 and 19 of the complaint are unfounded and baseless and denied in toto. On 28.01.2020, I addressed the conference of the Lotha Students' Union at Merapani. I spoke to the gathering in the Lotha Language. Inter alia, I urged the students not to be content merely with getting degrees. I encouraged them to work hard and try for the civil services. I also said that I was willing to extend assistance to deserving and needy civil service aspirants. Needless to say, persons inimical to my interests have interpreted my speech to suit their agenda. My concern and/or offer to assist eligible candidates in the public services should not and/or could not have been constructed as an offer to influence as alleges.



Justice Um. Lalth S. Nigh
 JUSTICE UM. LALTH S. NIGH
 (Former Chief Justice, High Court of Meghalaya)
 NAGALAND LOKAYUKTA

9. In fact, the Government of Nagaland has a standing policy for encouraging and assisting public service aspirants (UPSC). The press report in relation to the conference held on 28.01.2020, as appearing in the Nagaland Post may be perused. The said report clearly indicates the context and content of my speech.

Apparently, the allegations of the complainant in these paragraphs are based on assumptions. Assumptions rooted in third party sources, apart from their veracity, cannot be relied upon by the complainant to raise allegations against me. The unholy haste prompting the actions of the complainant can be seen from the complaint at paragraph 5, where reference is made to the "National Public Service Commission". I have never at any point of time stated that I can "manipulate" the National Public Service Commission. The fact that such body is non-existent in the State as well as the country seems to be lost to the complainant. I also categorically say that I did not make any statement and/or statements stating that I can "manipulate" the NPSC examination or any such exams as sought to be made out in these paragraphs of the complaint. I further categorically deny the allegations of "undue influence", "accrual of undue advantages", "lack of transparency", "abuse of discretion and lack of due process", "denial of opportunities", "abuse of power", "maladministration" and "erosion of trust in governance" as alleged by the complainant in these paragraphs.

A copy of the publication dated 28.01.2020 is hereto annexed and marked as ANNEXURE-C.

10. That the statements in paragraphs 10 of the complaint are untenable in facts and in law and denied in toto. Broad sweeping statements without material facts and particulars deserve outright rejection. At the same time, such reckless conduct cannot be condoned and must be strictly dealt with. The allegations against me in this paragraph are false and I have not indulged in and/or been partly to malpractices and/or illegal activities of any sort, as alleged in this paragraph in particular and in the complaint in general. The complaint freely uses phrases such as "corrupt practice", "monetary corruption", "pecuniary benefits", "undue advantages", "unfair advantage to the minister-in-charge vis-à-vis his opponents during elections", in relation to government jobs. I submit that these statements betray in no uncertain terms, the motivated nature of the allegations against me. Evidently, the complainant seeks to urge baseless issues on behalf of my political opponents.

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JUSTICE LINA NATH SINGH
(Former Chief Justice - High Court of Meghalaya)
NAGALAND LOKAYUKTA



11. That the statements in paragraphs 11 and 12 of the complaint contain further sweeping statements/allegations accusing me of illegal activities. I deny these allegations in toto. Furthermore, these paragraphs ex-facie reveal the malafide intent of the complainant. There are no material facts and particulars and/or specifics in relation to the allegations leveled against me. It appears that the complainant seeks to persuade the Hon'ble Nagaland Lokayukta to indulge in a roving exercise. Since the complainant seeks the initiation of criminal proceedings against me, he must disclose specific incidents or crimes allegedly committed by me. The statements/allegations of abuse of power and interference for making appointments at my behest are bald statements. Accusations alleging that the commission of offences must have foundational basis. The allegations against me in these paragraphs in particular and in the complaint in general do not have any foundational basis whatsoever.
12. That the statements in paragraphs 13 and 14 of the complaint are misconceived, untenable in facts and in law and denied. The complainant is not personally known to me and I have never had any interaction with him. Again, the allegations against me in these paragraphs in particular and in the complaint in general, are premised on surmises, conjectures and hearsay. They are baseless and false and do not merit the consideration of the Hon'ble Nagaland Lokayukta. The absurdity of the allegations is further compounded due to the absence of specifics as well as material facts and particulars. The interesting point of note is that the complainant himself states that his accusations are based on "speculations". He himself states in paragraph 13, "It is also known and speculated that in furtherance of the exercise of undue influence and arbitrary abuse of power, the PHQ recommended appointments to various posts based on recommendation letters of the Deputy CM Mr. Y. Patton and other public servants, which clearly shows abuse of power, use of undue influence and also substantiates his utterance of mutual give-and-take and trade-offs with other colleagues which bestows undue advantages on certain people, to the exclusion of others."

In so far as appointments to the police force are concerned, the Unit Commanders are empowered to appoint Constables. This method of recruitment has been incorporated in the Police Manual. Also, by the Notification No. AR-8/26/81(Pt) dated 24.09.2004, the Director General of Police is empowered to recruit personnel in the grade of UBSI/ABSI. The allegations in the complaint in relation to such appointments, placed before the Hon'ble Nagaland Lokayukta, have been widely circulated through various media platforms. Responding to the allegations, the Director General of Police has issued a statement bearing



Justice Uma Nath Singh

JUSTICE UMA NATH SINGH
(Former Chief Justice, High Court of Meghalaya)
NAGALAND AND LOKAYUKTA

No. PHQ(C-1)/PRESS RELEASE/2020/ dated 29.02.2020. This release was published in the local papers and a perusal of the same establishes that, the allegations about illegalities committed by me in appointments to the police force are false misconceived and baseless.

Copies of the Notification dated 24.09.04 and Release dated 29.02.2020 are hereto annexed and marked as ANNEXURES-D & E

13. That I deny the allegations in paragraph 15 of the complaint in relation to a speech made by me in April, 2018. The manner in which appointments are made in the Police Department has been referred to in the preceding paragraphs. In my speech, I spoke about the need for the people of the constituency to progress in all sectors. I reiterated my early speeches, where I stressed on the drawbacks in pursuing educational careers, only for the sake of certificates/degrees. Since public employment is more or less the only form of employment and/or the major form of employment, I urged the community to encourage students and job seekers to do their best. The words I spoke have conveniently been taken out of context by the complainant. That too, on the basis of sources known only to him and not through any form of direct communication between him and me. I say that, he was not present when I delivered the speech referred to by him. As such, the allegations in this paragraph deserve to be rejected.

14. That the statements in paragraph 16 of the complaint are denied. The complainant alleges that I have "scant regard for administrative procedures or regulations" and that this is a "known fact". It is reprehensible that the complainant indulges in such reckless conduct. The "known fact" referred to by him is visibly absent in the complaint and such irresponsible behavior cannot be condoned. The manner of appointment in the Police Force has been explained in the preceding paragraphs and the same is not repeated for the sake of brevity. I deny, vehemently and categorically, the allegations of "corruption", "mal-administration", "excess and illegal appointments" attributed to me as alleged in this paragraph in particular and in the complaint in general.

15. That the statements in paragraph 17 of the complaint are misconceived and ill-advised. Since the complainant raises allegations against me, he must satisfy the Hon'ble Nagaland Lokayukta that his complaint is genuine.



Bor Singh
 JUSTICE UMA NATH SINGH
 (Former Chief Justice, High Court of Meghalaya)
 NAGALAND LOKAYUKTA

16. It is impermissible for him to say or even suggest that he does not have evidence to support his allegations and that such evidence is available with other agencies/third parties.

17. That the statements in paragraph 18 of the complaint are misleading and denied. The Police Department has peculiar needs with regard to motor vehicles. As such, by Notification No. TPT/GEN/74 dated 03.11.09, the Police Department has been exempted from the modalities for the condemnation of government vehicles. The vehicle in question suffered structural damage resulting in the seizure of the engine. The estimated cost of repairs was assessed by the Motor Transport Wing of the Police Department, to be in excess of half of the actual price of the vehicle. The Motor Transport Wing therefore recommended condemnation of the vehicle. Subsequently, on payment of the auction price, the vehicle was allotted to my son, Jackson Patton. My son, Jackson Patton, is a businessman by profession. He is married and lives independently with his family.

The Police Department has a procedure in place for dealing with the procurement and use of vehicles. The said procedure also covers the disposal of vehicles. Therefore, to allege wrongdoing by me as the Minister-in-charge is misplaced and erroneous.

In relations to this transaction, an FIR was filed and a case registered in the South Police Station, Kohima (SPS Case No. 004/2018). The pertinent point of note is that I had no hand whatsoever in the matter relating to the vehicle in question. The allegations in this paragraph, therefore, do not merit the consideration of the Hon'ble Nagaland Lokayukta.

18. That the statements in paragraphs 20, 21 and 22 of the complaint are untenable in facts and in law. It is most unfair and unconscionable to aver that the Police Department has become compromised as alleged in these paragraphs. I deny that I have indulged in acts of corruption and/or maladministration. I further deny that circumstances of any sort have arisen for the initiation of proceedings by the Hon'ble Nagaland Lokayukta. The statements in these paragraphs continue in the same vein, with broad sweeping allegations aimed at prompting the Hon'ble Nagaland Lokayukta into a roving and/or fishing inquiry.

Justice Uma Nath Singh

JUSTICE UMA NATH SINGH
(Former Chief Justice, High Court of Nagaland)
NAGALAND LOKAYUKTA



19. That in the aforesaid premises, I humbly submit that there is a glaring lack of bonafides in relation to the complainant and the complaint filed by him. Firstly, he belongs to the Sumi tribe whereas I belong to the Lotha tribe and we are from different electoral constituencies. His complaint seems to be espousing the case of my political opponents. Secondly, he himself is a backdoor appointee and he served as a Teacher from 2007 to 2017. Thirdly, I have no personal interaction with the complainant. Also, I do not know the complainant and I am yet to meet with him. This would mean that the complainant himself has no personal knowledge whatsoever about the allegations leveled by him against me. His allegations, in toto, are hearsay. Fourthly, the complaint contains no specifics with regard to even one of the multiple allegations against me. Broad sweeping allegations cannot be the basis for the initiation of criminal proceedings. Fifthly, apart from broad sweeping allegations, the complaint is bereft of material facts and particulars/evidence.
20. That it is respectfully submitted that the complaint against me has been filed for collateral purposes. The bonafides of the complainant is suspect. The complaint itself is untenable in facts and in law.
21. That it is respectfully submitted that the complaint lacks foundational basis and is liable to be dismissed.
22. That it is respectfully submitted that in the facts and circumstances of the case, the conduct of the complainant requires examination. His conduct is malicious and the complaint is ex-facie motivated and for collateral purposes. He must be prosecuted in accordance with law for filing a false affidavit and for raising baseless allegations.
23. That the statements in this affidavit at paragraphs 1 to 3, and 6 to 17 are true to my knowledge, those are paragraphs 4 and 5 are derived from records/information, which I verily believe to be true and the rest are my humble submissions."

Shri Patton has vehemently denied all the allegations and impeached the credibility of the complainant. He has referred to a complaint against backdoor appointment of the complainant as a teacher in 2007. He has countered all the allegations by saying that they are baseless, malicious and politically motivated. He has also submitted that on account of tribalism, the complainant has filed the impugned complaint as they belong to different sub tribes of the Naga. According to him, the complainant has espoused the case of his political rivals by making sweeping and omnibus allegations which are not based on his personal knowledge.



B. Singh

JUSTICE GMA P. L. SINGH
Chief Justice, High Court of Meghalaya
Lokayukta

Further, Mr. Patton has also denied his hand in auction purchase of a condemned police vehicle by his son Mr. Jackson Patton who was allotted the vehicle after following the prescribed procedure. According to him, **all the Unit Commanders are empowered to appoint Constables through a prescribed method of recruitment as provided in the Police Manual. He has also referred to Notification No. AR-8/26/81(Pt) dated 24.09.2004, whereby the Director General of Police is empowered to recruit police personnel in the grade of UBSI/ABSI.** He has also referred to the statement of *the Director General of Police issued vide a press communiqué No. PHQ(C-1)/PRESS RELEASE/2020/ dated 29.02.2020 in reply to the controversy.* Thus, according to Mr. Patton, the press release in question which was published in the local papers goes to establish that the allegations about illegalities committed by him in the appointments to the police force are false, misconceived and baseless. He has also registered his objections to indiscriminate use of offending phrases and words against him without citing any specific incident or act to connect him to the impugned allegations. He has taken serious objection to the words attributed to him that he can manipulate the Public Service Commission. Mr. Patton has admitted to have *urged the students of his lotha naga tribe not to be content merely with getting degrees and he encouraged them to work hard and try for the civil services. He has admitted to have said that he was willing to extend assistance to deserving and needy civil service aspirants.*

On due consideration, all the allegations made against Mr. Y. Patton, Deputy Chief Minister of Nagaland in the impugned complaint are found to be devoid of substance in the absence of any prima facie evidence to connect him with such allegations and to engage the attention of the Lokayukta any further. The complaint has been submitted in haste with deficient facts. The Lokayukta is not supposed to indulge in roving enquiry with a view to fish out materials and evidence to prove non-specific, bald and omnibus allegations made in the complaint. Thus, the complaint deserves to be rejected and is accordingly dismissed.

Let a copy of this order be submitted to His Excellency the Governor of Nagaland under Section 25(4)(b) of the Nagaland Lokayukta Act, 2017 for consideration of observations and recommendations made in respect of the Nagaland Lokayukta Act, Framing of Nagaland Lokayukta Rules, the State Police Force in relation to the Special Responsibility of the Governor with respect to Law and Order under Article 371-A(b) of the Constitution, and also the Advocate General for Nagaland. The Office shall also furnish the hard and soft copies of the order to the parties and the media for information.

18-09-2020


(Justice Uma Nath Singh)

JUSTICE UMA NATH SINGH
(Former Chief Justice, High Court of Meghalaya)
NAGALAND LOKAYUKTA

