



The Bihar Lokayukta Act, 1973

The Bihar Lokayukta (Condition of Service) Rules, 1974

AND

The Bihar Lokayukta (Investigation) Rules, 1980

(As amended up to date)

A. THE BIHAR LOKAYUKTA ACT, 1973

(As amended up to date)

PRELIMINARY.

1. **Short title and commencement.**—(1) This Act may be called the Bihar Lokayukta Act, 1973.

(2) It extends to the whole of the State of Bihar.

(3) It shall come into force at once.

2. **Definitions.**—In this Act unless the context otherwise requires—

(a) “action” means action taken by way of decision, recommendation or finding or in any other manner and includes failure to act and all other expressions connoting action shall be construed accordingly;

(b) “allegation” in relation to a public servant means any affirmation that such public servant—

(i) has abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person.

(ii) was actuated in the discharge of the functions as such public servant by personal interest or improper, corrupt motives, or

(iii) is guilty of corruption or lack of integrity in his capacity as such public servant;

(c) “Competent authority” in relation to a public servant means—

(i) In the case of Ministers or a Secretary.—The Chief Minister or during the period of operation of any proclamation issued under Article 355 of the Constitution, the Government;

(ii) In the case of any other public servant.—Such a authority as may be prescribed;

(d) “grievance” means a claim by a person that he sustained injustice or undue hardship in consequence of maladministration;

(e) “Lokayukta” means a person appointed as the Lokayukta of Bihar under section 3;

(f) “maladministration” means action taken or purporting to have been taken in the exercise of administrative functions in any case—

(i) where such action or the administrative procedure or practice governing such action is unreasonable, unjust, oppressive or improperly discriminatory, or

(ii) where there has been negligence or undue delay in taking such action or the administrative procedure or practice governing such action involves undue delay;

(g) “Minister” means a member (other than the Chief Minister) of the Council of Ministers by whatever name called for the State and includes a State Minister, a Deputy Minister and Parliamentary Secretary;

(h) “Officer” means a person appointed to a public service or post in connection with the affairs of the State;

(i) “prescribed” means prescribed by rules made under this Act;

(j) “Public Servant” denotes a person falling under any of the descriptions hereinafter following namely:—

(i) every Minister referred to in clause (g);

(ii) every officer referred to in clause (h);

1-Lokayukta—

- (iii) every officer referred to in clause (h) who on deputation or on transfer to foreign service is in the service or pay of -
- (a) any local authority in the State which is notified in the Official Gazette;
 - (b) any Corporation (not being the local authority) established by or under the State Act and owned or controlled by the State Government;
 - (c) any Government Company within the meaning of section 617 of the Companies Act, 1956 (Act I of 1956) in which not less than fifty-one per cent of the paid up share capital is held by the State Government or any company which is a subsidiary of a company in which not less than fifty-one per cent of the paid up share capital is held by the State Government;
 - (d) any society registered under the Societies Registration Act, 1860 (Act 21 of 1860) which is subject to the control of the State Government and which is notified by the State Government in this behalf in the Official Gazette;
- (iv) every head of his deputy by whatever designation he may be known, of the local authority, the Corporation, the Government company or a registered society referred to in sub-clause (iii) or any other institution or authority, subsidised by the State Government.
- (k) "Secretary" means—
- (i) The Chief Secretary, a Principal Secretary, a Secretary, a Special Secretary or an Additional Secretary to the State Government in any Department or an officer of the rank of Divisional Commissioner posted in the Secretariat of the State Government or in any office attached to the Secretariat;
 - (ii) A Secretary, a Special Secretary or an Additional Secretary in the Chief Minister's Secretariat and includes a Joint Secretary in independent charge of any Department;

*2A जहाँ कोई व्यक्ति जिसके विरुद्ध अधिनियम के अधिन कोई अनुवेषण प्रारंभ किया जाय । यहाँ वह इस अधिनियम की धारा 7 प्रयोजनार्थ उस व्यक्ति पर लागू समझा जायेगा, बले ही बाद में उक्त पद धारण नहीं कर रहा है ।

(1) "State" means the State of Bihar.

3. **Appointment of Lokayukta.**—(1) For the purpose of conducting investigations in accordance with the provisions of this Act the Governor shall by warrant under his hand and shall appoint a person to be known as the Lokayukta of Bihar;

*Inserted by Bihar Act 41, 1988. Notification N.L.G. 1015/81 leg. 236, dated the 25th January 1982.

Provided that the Lokayukta shall be appointed after consultation with the Chief Justice of the Patna High Court and the Leader of the Opposition in the State Legislative Assembly or if there be no such leader a person elected in this behalf by the Members of the Opposition in the State Legislative Assembly in such manner as the Speaker may direct.

(2) The person appointed as the Lokayukta shall, before entering upon his office, make and subscribe, before the Governor, or some person appointed in that behalf by the Governor, an oath or affirmation in the form set out for the purposes in the First Schedule.

4. **Lokayukta to hold no other office.**—The Lokayukta shall not be a member of Parliament or a member of the Legislature of any State and shall not hold any

office of trust or profit (other than his office as the Lokayukta) or be connected with any political party or carry on any business or practice any profession or hold any post of Chairman or Secretary of the Managing Committee of a School or College or hold any post of Chairman, Secretary or Treasurer of a Co-operative Society or hold any post in any Notified Area Committee, Municipality, Municipal Corporation or District Board, and accordingly before he enters upon his office a person appointed as the Lokayukta, shall—

- (a) if he is a Member of Parliament or of the Legislature of any State, resign such membership; or
- (b) if he holds any office of trust or profit resign from such office; or
- (c) if he is connected with any political party, sever his connection with it, or
- (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, cease to practice such profession; or
- (f) if he is Chairman or Secretary or Member of the Managing Committee of any school or college, resign from such office, or
- (g) if he is Chairman, Secretary or Treasurer or a Member of any Co-operative Society, resign from such office; or
- (h) if he holds any post in any Notified Area Committee, Municipality, Municipal Corporation or District Board, resign from such post.

5. Term of office and other conditions of service of Lokayukta—(1) A person appointed as the Lokayukta shall hold office for a term of five years from the date on which he enters upon his office;

Provided that—

- (a) the Lokayukta may by writing under his hand addressed to the Governor resign his office;
- (b) the Lokayukta may be removed from office in the manner specified in section 6.

(2) On ceasing to hold office, the Lokayukta shall be ineligible from further employment (whether as the Lokayukta or in any other capacity) under the State Government or for any employment under an office in any such local authority Corporation, Government Company or Society as is referred to in sub-clause (iii) of clause (i) of section 2.

(3) There shall be paid to the Lokayukta such salary as is specified in the Second Schedule.

(4) The Lokayukta shall be entitled without payment of rent to the use of an official furnished residence and the State Government shall be liable for payment of the charges on account of rates and taxes in respect thereof due to State Government or any local authority or Corporation.

(5) The allowance and pension payable to, and other conditions of service of the Lokayukta shall be such as may be prescribed:

Provided that in prescribing the allowances and pension payable to, and their conditions of service of the Lokayukta regard shall be had to the allowances and pension payable to and other conditions of service of the Chief pension payable to, and other conditions of service of the Chief Justice of the Patna High Court:

Provided further that the allowances and pension payable to, and other conditions of service of the Lokayukta shall not be varied to this disadvantage after his appointment.

*Vide Bihar Act of 1988 No. leg 380; dated 12th August, 1988.

6. **Removal of Lokayukta.**—(1) Subject to the provision of Article 311 of the Constitution, the Lokayukta may be removed from his office by the Governor on the ground of misbehaviour or incapacity and on no other ground:

Provided that inquiry required to be held under clause (2) of the said Article before such removal shall be held by a person appointed by the Governor, being a person who is or has been the Chief Justice of a High Court or a Judge of the Supreme Court of India.

(2) A person appointed under the proviso to sub-section (1) shall submit the report of his inquiry to the Governor who shall, as soon as may be, cause it to be laid before each House of the State Legislature.

(3) Notwithstanding anything contained in sub-section (1) the Governor shall not remove the Lokayukta unless an address by each House of the State Legislature. Supported by a majority of the total membership of that House and 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.

7. **Matters which may be investigated by Lokayukta.**—Subject to the provisions of this Act the Lokayukta may investigate any action which is taken by, or with the general or specific approval of—

- (i) a Minister or a Secretary, or
- (ii) any other public servant;

in any case where a complaint involving a grievance or any allegation is made in respect of such action or such action can be or could have been, in the opinion of the Lokayukta, the subject of a grievance or an allegation.

8. **Matters not subject to investigation.**—(1) Except as hereinafter provided, the Lokayukta shall not conduct any investigation under this Act in the case of complaint involving a grievance in respect of any action—

- (a) if such action relate to any matter specified in the Third Schedule; or
- (b) if the complainant has or had any remedy by way of proceedings before any tribunal or court of law:

Provided that the Lokayukta may conduct an investigation notwithstanding that the complainant had or has such a remedy if he is satisfied that such person could not or cannot for sufficient cause have recourse to such remedy.

(2) The Lokayukta shall not investigate any action—

- (a) in respect of which a formal and public inquiry has been ordered under the Public Servants Inquiries Act, 1850 (Act 37 of 185); or
- (b) in respect of a matter which has been referred for enquiry under the Commissions of Inquiry Act, 1952 (Act 60 of 1952).

(3) The Lokayukta shall not investigate any complaint which is excluded from his jurisdiction by virtue of a notification issued under section 18.

(4) The Lokayukta shall not investigate any complaint—

- (a) involving a grievance, if the complaint is made after the expiry of twelve months from the date on which the action complained against becomes known to the complainant;
- (b) involving an allegation, if the complaint is made after the expiry of five years from the date on which the action complained against is alleged to have taken place:

Provided that the Lokayukta may entertain a complaint referred to in clause (a) the complainant satisfies him that he had sufficient cause for not making the complaint within the period specified in that clause.

(5) In the case of any complaint involving a grievance nothing in this Act shall be construed as empowering the Lokayukta to question any administrative action involving the exercise of a discretion, except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion cannot be regarded as having been properly exercised.

9. **Provisions relating to complaints.**—(1) Subject to the provisions of this Act a complaint may be made under this Act to the Lokayukta—

- (a) in the case of grievance, by the person aggrieved;
- (b) in the case of an allegation by any person other than a public servant ;

Provided that, where the person aggrieved is dead or is for any reason unable to act for himself, the complaint may be made by any person who in law represents his Estate or, as the case may be, by any person who is authorised by him in this behalf.

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

(3) Notwithstanding anything contained in any other enactment, any letter written to the Lokayukta by a person, in Police custody or in a goal or in any asylum or other place for insane person, shall be forwarded to the addressee un-opened and without delay by the Police Officer or other person in charge of such goal, asylum or other place and the Lokayukta may, if satisfied that it is necessary so to do treat such letter as a complaint made in accordance with the provisions of sub-section (2).

10. **Procedure in respect of investigation.**—(1) Where the Lokayukta proposes (after making such preliminary inquiry, as he deems fit) to conduct any investigation under this Act he—

- (a) shall forward a copy of the complaint or, in the case of any investigation which he proposes to conduct on his own motion, a statement setting out the grounds therefore, to the public servant concerned and the competent authority concerned;
- (b) shall afford to the public servant concerned an opportunity to offer his comments on such complaint or statement; and
- (c) may make such orders as to the safe custody of documents relevant to the investigation, as he deems fit.

(2) Every such investigation shall be conducted in private and in particular, the identity of the complaint and of the public servant affected by the investigation shall not be disclosed to the public or the press whether before, during or after the investigation ;

Provided that the Lokayukta may conduct any investigation relating to a matter of definite public importance in public if he, for reasons to be recorded in writing, thinks fit to do so.

(3) Save as aforesaid the procedure for conducting any such investigation shall be such as the Lokayukta considers appropriate in the circumstances of the case.

(4) The Lokayukta may, in his discretion, refuse to investigate or cease to investigate any complaint involving a grievance or an allegation is 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 investigating 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.

(4-A) The Lokayukta shall not proceed with any investigation under this Act where the Supreme Court or the High Court issues any direction, order or writ under Article 32 of Article 226 of the Constitution of India in respect of the matter mentioned in the complaint under investigation.

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

(6) The conduct of an investigation under this Act in respect of any action shall not affect such action, or any power or duty of any public servant to take further action with respect to any matter subject to the investigation.

11. Evidence.—(1) Subject to the provisions of this section for the purpose of any investigation (including the preliminary inquiry, if any, before such investigation) under this Act, the 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 any such information, or produce any such documents.

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

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (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 shall be deemed to be judicial proceeding within the meaning of section 193 of the Indian Penal Code (Act no. 45 of 1863).

(4) Subject to the provisions of sub-section (5) no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to Government or any public servant, whether imposed by any enactment or by any rule of law, shall apply to the disclosure of information for the purposes of any investigation under this Act and the Government or any public servant shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by any enactment or by any rule of law in legal proceedings.

(5) No person shall be required or authorised by virtue of this Act to furnish any such information or answer any such question or produce so much of any documents—

- (a) as might prejudice the security of the State or the investigation or detection of crime; or
- (b) as might involve the disclosure of proceedings of the Cabinet of the State Government, and for the purposes of this sub-section, a certificate issued by a Secretary certifying that any information, answer or portion of a document is of the nature specified in clause (a) or clause (b) shall be binding and conclusive.

(6) Subject to the provisions of sub-section (4), no person shall be compelled for the purpose of investigation under this Act to give any evidence or produce any document which he could not be compelled to give or produce in proceeding before a Court.

12. Reports of Lokayukta—(1) If, after investigation of any action in respect of which a complaint involving a grievance has been or can be or could have been made, the Lokayukta is satisfied that such action has resulted in injustice or undue hardship to the complainant or any other person, the Lokayukta shall by a report in writing, recommend to the public servant and the competent authority concerned that such injustice or undue hardship shall be remedied or redressed in such manner and within such time as may be specified in the report.

(2) The competent authority to whom a report is sent upon sub-section (1) shall, within one month of the expiry of the term specified in the report, intimate or cause to be intimated to the Lokayukta, the action taken for compliance with the report.

(3) If after investigation of any action in respect of which a complaint involving an allegation has been or can be or could have been made, the Lokayukta is satisfied that such allegation can be substantiated either wholly or partly, he shall by a report in writing communicate his findings and recommendations along with the relevant documents, materials and other evidence to the competent authority.

(4) The competent authority shall examine the report forwarded to it under sub-section (3) and intimate within three months of the date of receipt of the report, the Lokayukta, the action taken or proposed to be taken on the basis of the report.

(5) If the Lokayukta is satisfied with the action taken or proposed to be taken on his recommendations or findings referred to in sub-sections (1) and (3), he shall close the case under information to the complainant, the public servant and the competent authority concerned; but where he is not so satisfied and if he considers that the case so deserves, he may make a special report upon the case to the Governor and also inform the complainant concerned.

*5A) Where in a report forwarded by the Lokayukta any recommendation imposing the penalty of removal from the office of a public servant, falling within sub-clause (iv) of clause (j) of section 2 of the Act, had been made, it shall be lawful for the Government without any further enquiry to take action on the basis of the said recommendation for the removal of such public servant from his office and for making him ineligible for being elected to any office, specified by the Government in this behalf notwithstanding anything contained in any law for time being in force.

(6) The Lokayukta shall present annually a consolidated report on the performance of his functions under this Act to the Governor.

(7) On receipt of a special report under sub-section (5), or the annual report under sub-section (6), the Governor shall cause a copy thereof together with an explanatory memorandum to be laid before each House of the State Legislature.

(8) Subject to the provisions of sub-section (2) of section 10, the Lokayukta may, at his discretion, make available from time to time, the substance of cases closed or otherwise disposed of by him which may appear to him to be of general public, academic or professional interest in such manner and to such persons as he may deem appropriate.

*12A. Imposition of cost by Lokayukta to be recoverable as an arrear of revenue.—In case the complaint is found malicious, vexatious or false, the Lokayukta may impose suitable cost against the complainant and the same shall be recoverable as an arrear of revenues.

*Inserted vide Bihar Act 13 of 1988 no. leg 380, dated 12th August, 1988.

13. Staff of Lokayukta.—(1) The Lokayukta may appoint or authorise any officer subordinate to him to appoint officers and other employees to assist him in discharge of his function under this Act.

(2) The categories and number of officers and employees who may be appointed under sub-section (1), their salaries, allowances and other conditions of service and the administrative powers of the Lokayukta shall be such as may be prescribed after consultation with the Lokayukta.

(3) Without prejudice to the provisions of sub-section (1), the Lokayukta may, for the purpose of conducting investigation under this Act, utilise the services of (i) any officer or investigation agency of the State Government with the concurrence of the State Government, or (ii) any other person or agency.

14. Secrecy of information.—(1) Any information, obtained by the Lokayukta or members of his staff in the course of, or for the purposes of any investigation under this Act, and any evidence recorded or collected in connection with such information, shall subject to the provisions of the proviso to sub-section (2) of section 10, be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872 (Act no. 1 of 1872), no court shall be entitled to compel the Lokayukta or any public servant to give evidence relating to such information or produce the evidence so recorded or collected.

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

- (a) for purposes of the investigation or any report to be made thereon or for any action or proceedings to be taken on such report; or
- (b) for purposes of any proceedings for an offence under the Indian Official Secrets Act, 1923 (Act no. 19 of 1923) or an offence of perjury or for purposes of any proceedings under section 15; or
- (c) for such other purposes as may be prescribed.

(3) An officer or other authority prescribed in this behalf may give notice in writing to the Lokayukta with respect to any document or information specified in the notice or any class of documents so specified that in the opinion of the State Government the disclosure of the documents or information of documents or information of that class would be contrary to public interest and where such a notice is given, nothing in this Act shall be constructed as authorising or requiring the Lokayukta or any member of his staff to communicate to any person any document or information specified in the notice or any document or information of a class so specified.

15. Intentional insult or interruption to, or bringing into dispute, Lokayukta.—(1) Whoever intentionally offers any insult or causes any interruption to the Lokayukta, while the Lokayukta is conducting any investigation under this Act, shall 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 into dispute, shall 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 198B of the Code of Criminal Procedure, 1898 (Act no. 5 of 1898) shall apply in relation to an offence under sub-section (1) or sub-section (2) as they apply in relation to an offence referred to in sub-section (1) of the said section 198B, subject to the modification that no complaint in respect of such offence shall be made by the public prosecutor except with the previous sanction of the Lokayukta.

16. Protection.—(1) No suit, prosecution, or other legal proceeding shall lie against the Lokayukta or against any officer, employee, agency or persons referred to in section 13 in respect of anything which is in good faith done or intended to be done under this Act.

(2) No proceedings of the Lokayukta shall be held bad for want of form and except on the ground of jurisdiction, to be proceedings or decision of the Lokayukta shall be liable to be challenged, reviewed, quashed or called in question in any court.

17. Conferment of additional functions on Lokayukta.—(1) The Governor may, by notification published in the Official Gazette and after consultation with the Lokayukta confer on the Lokayukta such additional functions in relation to the redress of grievances and eradication of corruption as may be specified in the notification.

(2) The Governor may, by order in writing and after consultation with the Lokayukta, confer on the Lokayukta such powers of a supervisory nature over agencies authorities or officers set up, constituted or appointed by the State Government for the redress of grievances and eradication of corruption.

(3) The Governor may by order in writing and subject to such conditions and limitations as may be specified in the order require the Lokayukta to investigate any action (being action in respect of which a complaint may be made under this Act to the Lokayukta), and notwithstanding anything contained in this Act the Lokayukta shall comply with such order.

(4) When any additional functions are conferred on a Lokayukta under sub-section (1), or when a Lokayukta is to investigate any action under sub-section (3), the Lokayukta shall exercise the same powers and discharge the same functions as he would in the case of any investigation made on a complaint involving a grievance or an allegation, as the case may be, and the provisions of this Act shall apply accordingly.

18. Power to exclude complaints against certain classes of public servants.—(1) The State Government may, on the recommendation of the Lokayukta and on being satisfied that it is necessary or expedient in the public interest so to do, exclude, by notification in the Official Gazette, complaints involving grievances or allegations or both against persons belonging to any class of public servants holding non-Gazetted posts* specified in the notification, from the jurisdiction of the Lokayukta.

(2) Every notification issued under sub-section (1) shall be laid as soon as may be after it is issued, before each House of 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 successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made the notification 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 amendment shall be without prejudice to the validity of anything previously done by virtue of that notification.

Issued vide Personnel Department (C. & M.) notification, dated 5th August, 1974 which reads as follows:—

“Whereas the Governor of Bihar has received recommendation from the Lokayukta of Bihar for excluding complaints involving grievances or allegations or both against public servants holding non-gazetted posts from his jurisdiction;

And whereas, the Governor is satisfied that it is expedient in the public interest so to do;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 18 of the Bihar Lokayukta Act, 1973 (Bihar Act VI of 1974), the Governor of Bihar is pleased to declare that complaints involving grievances