

THE ODISHA LOKAYUKTA (AMENDMENT) BILL, 2022

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BILL

FURTHER TO AMEND THE ODISHA LOKAYUKTA ACT, 2014.

BE it enacted by the Legislature of the State of Odisha in the Seventy-third Year of the Republic of India as follows: —

Short title.

1. This Act may be called the Odisha Lokayukta (Amendment) Act, 2022.

Amendment of section 2.

2. In the Odisha Lokayukta Act, 2014(hereinafter called the principal Act), in section 2, in sub-section (1), in clause (c), for sub-clause (iv), the following sub-clause shall be substituted, namely: —

Odisha Act
12 of 2018.

“(iv) an officer or employee in any Department of the Government,—

(A) in case of Chief Secretary, means the Chief Minister;

(B) in case of Secretary of a Department of Government, means the Chief Secretary; and

(C) in case of other officers or employees means the Secretary of a Department under which such officer is serving,

Explanation.— For the purpose of this sub-clause, the expression “Secretary” means Secretary-in-Charge of a Department of Government and shall include an Additional Chief Secretary, a Principal Secretary, a Commissioner-cum-Secretary or a Special Secretary;”.

Amendment of section 14.

3. In the principal Act, in section 14, in sub-section (1), in clause (h), after the words “in receipt of any donation” and before the words “from any foreign source”, the words “from the public and the annual income of which exceeds such amount as the Government may, by notification, specify or” shall be omitted.

Amendment of section 22.

4. In the principal Act, section 22 shall be renumbered as sub-section(1) thereof and after sub-section (1), as so renumbered, the following sub-section shall be inserted, namely: —

“(2) For any willful disobedience of any process, order or direction of the Lokayukta by a public servant shall be treated as misconduct for which disciplinary action may be taken up against the concerned officer under the service rules applicable to him on the recommendation of the Lokayukta.”.

“Power to punish for contempt.

5. In the principal Act, after section 27, the following section shall be inserted, namely: —

Insertion of new section 27 A.

27A. The Lokayukta shall have, and exercise the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise, and, for this purpose, the provisions of the Contempt of Courts Act, 1971 shall have effect subject to the modification that the references therein to a High Court shall be construed as including a reference to the Lokayukta.”.

Amendment
of section 41.

6. In the principal Act, in section 41,—

(a) for the marginal heading, the following marginal heading shall be substituted, namely:—

“Allocation of fund by the Government.”; and

(b) for the words “make to the Lokayukta grants”, the words “allocate fund to the Lokayukta” shall be substituted.

Amendment
of section 42.

7. In the principal Act, in section 42,—

(a) for the marginal heading, the following marginal heading shall be substituted, namely:—

“Maintenance of Accounts and other records.”;

(b) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Lokayukta shall maintain proper accounts and other relevant records in such manner as may be prescribed.”; and

(c) sub-section (4) shall be omitted.

Amendment
of section 57.

8. In the principal Act, in section 57, in sub-section (2), for clause (i), the following clause shall be substituted, namely:—

“(i) manner of maintenance of accounts and other relevant records under sub-section (1) of section 42.”.

Statements of Objects and Reasons

Under section 2(1)(c)(iv) of the Odisha Lokayukta Act, 2014, the Minister-in-charge of a Department functions as the "competent authority" in relation to an officer serving in that Department. The 'competent authority' is required to furnish the views/comments on the allegations made in the complaint against the public servant when sought for by the Lokayukta or its Inquiry Wing and to initiate departmental proceedings or take appropriate action against the public servant on the recommendation of the Lokayukta. For administrative convenience and for effective implementation of the provisions of the said Act, it is considered expedient to substitute sub-clause (iv) of clause (c) of sub-section (1) of section 2 of the said Act suitably specifying 'competent authority' as per the hierarchy instead of Minister-in-Charge of the Department.

2. Clause (h) of sub-section(1) of section 14 of the said Act brings every other society or association of persons or trust, referred under the above clause, receiving any donation from the public or from any foreign source under the Foreign Contribution (Regulation) Act, 2010 under the purview of inquiry by the Lokayukta. The existing provision of 'receipt of any donation from the public' may create an unnecessary exercise having no mention on specific type of donation. Such cases can be inquired into by the appropriate agencies of the State administration. Further, the Central Act, i.e. the Lokpal and Lokayuktas Act, 2013 does not have such provision. As such, it is considered expedient to suitably amend clause (h) of sub-section(1) of section 14 so that any other society receiving donation from public shall be excluded from the jurisdiction of the Lokayukta.

3. The Lokayukta, in their Annual Report for the year 2020, have made suggestions to the State Government for making suitable provision in the said Act to empower the Lokayukta with the power to punish for Contempt of Courts and to make specific provision in the said Act to treat willful disobedience of any process, order or direction of the Lokayukta as a serious misconduct on the part of an official entailing departmental action/departmental proceeding on the recommendation of the Lokayukta, for strengthening the institution of Lokayukta. This matter was referred to Law Department. The Law Department have agreed to the above suggestions of the Hon'ble Lokayukta and have advised to make necessary amendment in the Odisha Lokayukta Act, 2014. On consideration of the opinion of the Law Department, it is considered expedient to amend the Act suitably, (a)

renumbering section 22 as section 22(1) and incorporating a new sub-section as section 22(2) to the effect that if any public servant willfully disobey of any process, or order, or direction of the Lokayukta shall be treated as misconduct and such public servant liable to be proceeded with a disciplinary action on the recommendation of the Lokayukta; and (b) inserting a new section as section 27 A to empower the Lokayukta with the power to punish for contempt under the Contempt of Courts Act, 1971 for strengthening the institution of the Lokayukta.

4. Section 41 of the said Act provides that the State Government are to provide the Lokayukta grants of such sums of money as are required to be paid for salary and allowances and other administrative expenses. Instead of providing grants, at present fund is being allocated in the Budget for the Lokayukta. The Accountant General(Audit-1), during the audit of expenditure of the Lokayukta for the year ending March, 2020 has observed that the present system of funding i.e. budgetary allocation instead of grants, contravenes the provisions of the Act. The present practice of allocation of fund to the Lokayukta has been carried over from the earlier practice that was being made for the Office of the Lokpal after establishment of the Lokayukta in the State. No functional difficulty or deficiency has been noticed or reported in the present procedure of funding to the Lokayukta. On being referred, Finance Department have concurred in the proposal for allocation of fund to the Lokayukta instead of grants. As such, for administrative convenience, it is considered expedient to amend section 41 of the Act suitably to continue the present practice of allocation of fund in the Budget for the Office of the Lokayukta instead of grants and consequently to substitute sub-section (1) of section 42 and to omit sub-section(4) of said section 42 and also to substitute clause (i) of sub-section (2) of section 57 to make the funding system to the Lokayukta in line with the provisions of the Act.

Naveen Patnaik
Member-in-Charge

ANNEXURE

[Extract from the Odisha Lokayukta Act, 2014(Odisha Act 12 of 2018)]

Definition 2. (1)

(a) X X X X X X

(b) X X X X X X

(c) (i) X X X X X X

(iv) an officer in any Department of the Government,
means the Minister- in- charge of the Department
under which such officer is serving;

X X X X X X

X X X X X X

**Jurisdiction of
Lokayukta to include
Chief Minister,
Ministers, Members of
Legislature, officers and
employees of the State
Government.**

14. (1)

(h) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not) in receipt of any donation from the public and the annual income of which exceeds such amount as the Government may, by notification, specify or from any foreign source under the Foreign Contribution (Regulation) Act, 2010 in excess of ten lakh rupees in a year or such higher amount as the Central Government may, by notification, specify:

Provided that any person referred to in this clause shall be deemed to be a public servant under clause (c) of section 2 of the Prevention of Corruption Act, 1988 and the provisions of that Act shall apply accordingly.

X X X X X X

42 of
2010.

49 of 1988.

Lokayukta may require any public servant or any other person to furnish information, etc.

22. Subject to the provisions of this Act, for the purpose of any preliminary inquiry or investigation, the Lokayukta or the investigating authority, as the case may be, may require any public servant or any other person who, in its opinion, is able to furnish information or produce documents relevant to such preliminary inquiry or investigation, to furnish any such information or produce any such document.

X X X X X X

X X X X X X

Inquiry Wing to have powers of civil court in certain cases.

27. (1) Subject to the provisions of this section, for the purpose of any preliminary inquiry, the Inquiry Wing of the Lokayukta shall have all the powers of a civil court, under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

5 of 1908.

- (i) summoning and enforcing the attendance of any person and examining him on oath;
- (ii) requiring the discovery and production of any document;
- (iii) receiving evidence on affidavits;
- (iv) requisitioning any public record or copy thereof from any court or office;
- (v) issuing commissions for the examination of witnesses or documents:

Provided that such commission, in case of a witness, shall be issued only where the witness, in the opinion of the Lokayukta, is not in a position to attend the proceeding before the Lokayukta; and

(vi) such other matters as may be prescribed.

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

45 of 1860.

X X X X X X

Grants by the Government

41. The Government may, after due appropriation made by the Legislative Assembly by law in this behalf, make to the Lokayukta grants of such sums of money as are required to be paid for the salaries and allowances payable to the Chairperson and Members and the administrative expenses, including the salaries and allowances and pension payable to or in respect of officers and other employees of the Lokayukta.

Annual statement of accounts.

42. (1) The Lokayukta shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Accountant General, Odisha.

X	X	X	X	X	X
X	X	X	X	X	X

(4) The accounts of the Lokayukta, as certified by the Accountant General, Odisha or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Government and the Government shall cause the same to be laid before the Odisha Legislative Assembly.

Power to make rules.

X	X	X	X	X	X	
57. (1)	X	X	X	X	X	X
(2)						
(a)	X	X	X	X	X	X
	X	X	X	X	X	X

(i) the form for maintaining the accounts and other relevant records and the form of annual statement of accounts under sub-section (1) of section 42;