



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 33924 OF 2024 (S-RES)

BETWEEN:

SRI N. PRADEEP KUMAR
S/O SRI. NAGARAJAIAH
AGED ABOUT 36 YEARS,
WORKING AS ASST. DIRECTOR
TOWN PLANNING SOUTH ZONE
BRUHAT BENGALRU MAHAVNAGARA PALIKE
SOUTH END CIRCLE, R V ROAD,
BENGALURU – 560 041

...PETITIONER

(BY SRI. A. RAVISHANKAR, FOR
SRI. MUNIRAJA M., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
URBAN DEVELOPMENT DEPARTMENT
VIKASA SOUDH, A DR. AMBEDKAR VEEDHI
BENGALURU
REP. BY ITS PRINCIPAL SECRETARY
2. THE CHIEF COMMISSIONER
BRUHAT BENGALRUU MAHANVAGAR PALIKE
HUDSON CIRCLE,
BENGALURU – 560 002
3. THE KARNATAKA LOKAYUKTA
M S BUILDING
BENGAULURU
REP. BY ITS REGISTGRAR

...RESPONDENTS

(BY SRI. G. RAMESH NAIK, AGA FOR R1;
SRI. B. L. SANJEEV, ADVOCATE FOR R2;
SRI. K. PRASANNA SHETTY, ADVOCATE FOR R3)

Digitally
signed by
CHANDANA
B M

Location:
High Court
of Karnataka



THIS W.P. IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DTD. 08.11.2024 VIDE GOVERNMENT ORDER NO. UDD 96 MNU 2022 PASSED BY THE R-1 GOVERNMENT BY ENTRUSTING THE INQUIRY TO THE R-3 LOKAYUKTA UNDER RULE 14-A OF THE CCA RULES AS PER ANNEX-A IN SO FAR PETITIONER IS CONCERNED.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioner seeks the following reliefs:

a) To issue a writ of certiorari or any other appropriate writ, order or direction to quash the impugned order dated 08.11.2024 vide Government Order No.UDD 96 MNU 2022 passed by the 1st respondent – Government by entrusting the inquiry to the 3rd respondent Lokayukta under Rule 14-A of CCA Rules as per Annexure-A insofar as the petitioner is concerned.

b) To grant such other or further relief/s that this Hon'ble Court may deem fit and proper in the facts and circumstances of this case, including the cost of this proceedings, in the interest of justice.



2. Heard learned counsel for the petitioner, learned AGA for respondent No.1 and learned counsel for respondent Nos.2 and 3 and perused the material on record.

3. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned counsel for the petitioner submits that the impugned order at Annexure-A dated 08.11.2024 passed by respondent No.1-State under Section 14-A of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, is erroneous, arbitrary or without jurisdiction of law inasmuch as, the petitioner was not an employee of respondent No.1 – State but was working as Assistant Executive Engineer of respondent No.2 – BBMP who was entitled/authorized/empowered to pass the impugned order and not respondent No.1 – State and the impugned order deserves to be quashed on this ground alone. It is further submitted that the impugned order entrusting the enquiry to be conducted against the petitioner by the Lokayukta is laconic, cryptic, unreasoned, non speaking order with absolutely no application of mind, which deserves to be quashed on this ground also.



4. Per contra, learned counsel for the respondent submits that there is no merit in the petition and the same is liable to be set aside.

5. Though several contentions have been urged by both sides in support of their respective claims, a perusal of the impugned order will indicate that respondent No.1 – State has specifically referred to the communication/letters/correspondence dated 15.10.2022, 30.01.2024 and 12.08.2024 addressed by the respondent –State to the BBMP, where petitioner was working as Assistant Executive Engineer. It is specifically recorded in the impugned order that the BBMP had not submitted any documents sought for by the State Government. It is well settled that for the purpose of passing the order under Rule 14-A of the CCA Rules, it was incumbent upon the Disciplinary Authority to apply its mind before entrusting the enquiry to the Lokayukta and any order passed by the Disciplinary Authority without application of mind deserves to be quashed as held by the Hon'ble Division Bench in the case of ***Sanjeev Kumar Vs. The State of Karnataka and Anr.*** – ***W.P.No.205398/2019 dated 24.02.2020***, wherein it is held as under:



“Being aggrieved by the order dated 3.10.2019 passed in application No.2127/2017 whereby the Karnataka Administrative Tribunal, Bengaluru (hereinafter referred to as ‘Tribunal’ for short) rejected the challenge to the entrustment of enquiry into the hands of the 2nd respondent Lokayukta by the 1st respondent-Government, the instant writ petition is filed.

2. The material facts necessary for appreciation of the controversy are as follows:

The Water Resources Department introduced a project called Mullamari Irrigation Project in Chincholi Taluk, Kalaburagi District, to provide water facilities for irrigation purpose. Rehabilitation Centres were established to provide shelters to the displaced families of the submerged land in respect of three villages in Chincholi Taluk. Accordingly, the Executive Engineer/Assistant Executive Engineer of respective divisions and subdivisions were empowered to allot sites for displaced families. It transpires that on 20.4.2007, the then Secretary and Panchayat Development Officer (hereinafter referred to as ‘PDO’ for short) of Gadalingadalli Gramapanchayat on the direction of Karnataka Neeravari Nigam Limited (hereinafter referred to as ‘KNNL’ for short) issued a letter of allotment in respect of site No.86 along with sanctioned plan for construction of a house in favour Smt. Mahananda, W/o. Adeppa Huli under the Rehabilitation Scheme with certain



conditions. The rehabilitation Scheme was managed by the KNNL.

3. It is pleaded that instead of constructing a house on Site No.86, Smt. Mahananda built a house in the place reserved for a civic amenity i.e., a park. Immediately, the Assistant Executive Engineer of the project, KNNL, caused a notice to Smt. Mahananda in the year 2007. During the pendency of these proceedings, in terms of the notice, it transpires that one Sri Lingaraju, son of Surya Kanth of Chennur village, Chincholi Taluk made an application on 1.4.2013 to the Assistant Executive Engineer, KNNL, Dam Sub-Division, Chimman Chooda, alleging that Smt. Mahananda had constructed a house in an area reserved for civic amenity under the Scheme. In response to the application made, the Assistant Executive Engineer replied that notices were issued on 10.11.2006 to Smt. Mahananda that the construction of the house building in the civic amenity site was illegal and the same had been replied by Smt. Mahananda stating that she had not built any house in the place that was alleged, but the house was built in a farm land which belonged to her and she was ready for a resurvey of the land.

4. After getting this reply from KNNL, Sri Lingaraju gave a complaint to the 2nd respondent-Lokayukta alleging that no action is taken against the owner of the house built on the civic amenity site and the construction not demolished. The 2nd respondent-



Lokayukta conducted an investigation in the matter under Section 9 of the Karnataka Lokayukta Act (hereinafter referred to as 'Act' for short) and framed its report under Sub-section (3) of Section 12 of the Act and communicated the same to the 1st respondent recommending that a departmental enquiry be conducted against the petitioner and the same be entrusted to it under Rule 14-A under Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 (hereinafter referred to as 'Rules' for short).

5. *The Government by its order dated 2.1.2017 entrusted the departmental enquiry to be conducted against the petitioner to the hands of Lokayukta in terms of Rule 14-A of the Rules. In terms of which, the Lokayukta nominated Additional Registrar of Enquiry-III as the enquiry officer to conduct departmental enquiry against the petitioner. At that stage, the petitioner approached the Tribunal in application No.2127/2017 and the Tribunal, on 11.4.2017, granted interim order of stay of further proceedings. Finally, the Tribunal by its order dated 3.10.2019, following the judgment of a Division Bench of this Court, has dismissed the application filed by the petitioner on the ground that it is not the stage at which the Tribunal could interfere in the matter as there is prima facie material to show the involvement of the petitioner in the alleged acts and dismissed the application.*



Feeling aggrieved, the applicant before the Tribunal has filed the instant writ petition.

6. *We have heard. Sri. Mahesh Patil, learned Counsel appearing for the petitioner, Smt. Archana P. Tiwari, learned Additional Government Advocate appearing for respondent No.1 and Sri. Subhash Mallapur, learned Counsel appearing for respondent No.2.*

7. *Learned Counsel for the petitioner would contend that the petitioner took charge of the post of PDO of Gadalingadalli Gramapanchayat on 9.10.2012. By then, the earlier PDO appears to have issued a notice to Smt. Mahananda with regard to construction of the house. The property was still under the control of the KNNL and had not yet been handed over to the Gadalingadalli Gramapanchayat. It was a matter of 2007 and he had taken charge on 9.10.2012.*

7.1. *Learned Counsel for petitioner would further contend that pursuant to the complaint before the KNNL with regard to construction of the house in the civic amenity site, notices came to be issued by the KNNL to Smt. Mahananda, but the complainant not being satisfied, approached the Lokayukta.*

7.2. *It is further contended that under Section 8(2) of the Act, the complaint, involving an allegation made after five years, should not have been entertained by the Lokayukta. It is also contended by the learned Counsel that in terms of Section 9(3) of the Act, the*



investigation report that was pursuant to the complaint ought to have been made available to the petitioner and not having done so is in violation of the mandatory provision of the Act.

7.3. The learned Counsel for the petitioner would further contend that the 1st respondent Government ought to have applied its mind before entrusting the matter to the hands of the 2nd respondent to the conduct of enquiry and the Government order dated 7.1.2017 is in blatant violation of Section 12(4) of the Act, in the light of the fact that the petitioner had contended in his reply that the property had not been transferred to the hands of Panchayat and was still under the control of KNNL and he had no control or jurisdiction over the area in question and hence, could not have acted against the individual.

7.4. It is also contended that the Tribunal has grossly erred in rejecting the application notwithstanding the aforementioned grounds as also on the ground that it was not a stage at which the Tribunal would interfere in the proceedings.

8. Per contra, the learned Counsel for the 2nd respondent-Lokayukta contends that the Lokayukta has discretion to entertain a complaint involving an allegation even after the expiry of five years and the bar contained under Section 8 is only directory and not mandatory.

8.1. He would contend that there is no obligation on the part of the Lokayukta to furnish a copy of the investigation conducted by the Lokayukta under Section 9



of the Act and it would suffice that if a copy of the complaint is given to the delinquent official.

8.2. He would further contend that the application filed before the Tribunal was premature as it challenged an order entrusting the enquiry to the Lokayukta and appointment of the enquiry officer to frame the charge.

8.3. It is also his contention that the order entrusting enquiry to the Lokayukta under Section 12(4) of the Act is in consonance with the provisions as every material is recorded and all the contentions are addressed.

8.4. Learned Counsel for the 2nd respondent Lokayukta further vehemently contends that once the investigation is taken up by the Lokayukta, the Government/competent authority has no choice but to entrust the enquiry to the Lokayukta. The competent authority also loses its right to conduct disciplinary proceedings against its employee. Once the investigation is conducted by the Lokayukta, a report under Section 12(3) is furnished to the competent authority. It is his submission that it is immaterial as to whether the order entrusting the enquiry under Rule 14-A contains reasons or otherwise.

8.5. By way of a memo dated 12.2.2020, the learned Counsel for the 2nd respondent has placed before us the complete proceedings right from the date of filing



of the complaint till the date of the order passed by the Tribunal.

9. *The learned Additional Government Advocate appearing for respondent No.1 would submit in support of the order entrusting the enquiry to the hands of the Lokayukta and reiterate the submissions made by the learned Counsel for 2nd respondent and would also support the order of the Tribunal contending that the application before the Tribunal as well as the writ petition now preferred, are all premature and not the stage at which the Writ Court could interfere with the proceedings. The learned Additional Government Advocate would however dispute with regard to the contention that once the 2nd respondent-Lokayukta investigates into the complaint, the enquiry has to be entrusted to its hands. Insofar as the submission of the 2nd respondent that the enquiry has to be entrusted to the Lokayukta, the learned Additional Government Advocate would submit that the discretion is always available with the Government and he disputes the submission made by the learned Counsel for the 2nd respondent.*

10. *We have given our anxious consideration to the contentions urged on behalf of the parties and have perused the writ papers as well as the complete records pertaining to the complaint against the petitioner.*

11. *In consequence thereof, the following points would arise for our consideration:*



(i) Whether the order entrusting the enquiry is in compliance with Section 12(4) of the Act ?

(ii) Whether an enquiry should mandatorily be entrusted to the 2nd respondent Lokayukta, once the investigation is conducted by the Lokayukta on a complaint and a report is submitted under Section 12(3) of the Act ?

(iii) Whether the order of the Tribunal requires interference?

12. **Re. point No.1:**

Since the issue involves an interplay between Section 12(4) of the Act, Rule 14-A of the Rules and discretion of the competent authority/disciplinary authority, the relevant provisions are required to be extracted for the purpose of ready reference.

Section 12(1) to (4) of the Act reads as follows:

1. If, after investigation of any action involving a grievance has been made, the Lokayukta or an Upalokayukta is satisfied that such action has resulted in injustice or undue hardship to the complainant or to any other person, the Lokayukta or an Upalokayukta shall, by a report in writing, recommend to the competent authority concerned that such injustice or 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 under sub-section(1) shall, within one month of the expiry of the period specified in the report, intimate or cause to be intimated to the Lokayukta or the Upalokayukta the action taken on the report.
3. If, after investigation of any action involving an allegation has been made, the Lokayukta or an Upalokayukta is satisfied that such allegation is substantiated either wholly or partly, he shall by 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 within three



months of the date of receipt of the report, intimate or cause to be intimated to the Lokayukta or the Upalokayukta the action taken or proposed to be taken on the basis of the report.

5. *If the Lokayukta or the Upa-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 Competent Authority concerned and the complainant.*

In terms of the afore-extracted provisions of the Act, Subsection (1) of Section 12 of the Act vests consideration of a complaint involving a grievance which has resulted in injustice or undue hardship to the complainant or to any other person, a report is to be submitted to the competent authority.

Sub-section (3) of Section 12 of the Act revolves around a complaint involving an allegation and upon being satisfied that such allegation is either wholly or partly substantiated, report shall be made to the competent authority with the recommendations along with relevant documents, materials and other evidence for further action.

13. *It is after the receipt of the report under Section 12(3) of the Act, the competent authority is required to examine the report forwarded to it under Section 12(3) of the Act and action taken or proposed to be taken on the basis of the report, should be communicated to the Lokayukta by the competent*



authority within three months. In terms of Section 12(4) of the Act, the competent authority has to examine the report forwarded to it under Section 12(3) and intimate or cause to be intimated the action taken or proposed to be taken on the basis of the said report of the Lokayukta under Section 12(3). Section 12(5) of the Act comes into play in the event the action taken is to the satisfaction of the Lokayukta or the Upa Lokayukta, he shall close the case under information to the complainant, the public servant and the Competent Authority concerned, or if it is not satisfied and if it is so considered by the Lokayukta or the Upa Lokayukta may, make a special report to the Governor. Section 12(7) of the Act further provides that on receipt of a report under Section 12(5) or annual report under Section 12(6), a Governor shall cause a copy thereof together with an explanatory memorandum to be laid before each house of the State Legislature. The issue, in the instant case, is whether there has been compliance with the provisions of the afore-extracted sections in particular of Section 12(4) of the Act and qua the facts obtaining in the case on hand.

14. *One Lingaraju registered a complaint before the KNNL on 1.4.2013 alleging that Smt. Mahananda has constructed her house on a civic amenity site and a notice was issued by the KNNL on 10.11.2006 and there was no reply to the notice or any action by the KNNL against Smt. Mahananda for such construction. It was also sought in the complaint that in the event it is found that she has constructed a house in the civic amenity site,*



it should be demolished and a park should be constructed.

15. On 7.6.2013, the Assistant Executive Engineer examining the complaint of Sri Lingaraju, replied that they would examine by conducting survey and if it is found that the house is constructed on a civic amenity site, it would be demolished and a park would be put in its place.

16. To a query by the petitioner, as to whether the alleged property had been transferred to the panchayat or still remained with KNNL, the KNNL communicated on 5.2.2015, that the papers are put up for transferring the property to the Panchayat but the decision to transfer the same is not yet taken and the property still remains under the control of the KNNL.

17. The learned Counsel appearing for the KNNL was also directed to seek information as to whether the property had been transferred from the KNNL to the Panchayat, and on instructions and verification, the learned Counsel submitted that the property is still with KNNL and is not yet transferred to the jurisdictional Panchayath.

18. The petitioner, being a PDO of Gadilingadalli Grama Panchayath, could not have even thought of acting against a property that did not come under his jurisdiction. Notwithstanding the clear information furnished to Lingaraju, Lingaraju lodged a complaint before Lokayukta on 14.5.2015. The form of



the complaint and the letter communicated did not disclose any allegation against the petitioner. It was his grievance that, on 7.6.2013, a notice had been issued to Smt. Mahananda and nothing had been done thereafter, and vaguely states that the PDO and the Assistant Executive Engineer have colluded in not taking any action to demolish the house. A notice was issued to the petitioner, enclosing the complaint, to which the petitioner had replied. It appears that the Lokayukta without considering the reply submitted by the petitioner, a report under Sub-section (3) of Section 12 of the Act was sent to the competent authority for entrustment of enquiry to the hands of the 2nd respondent-Lokayukta.

19. It is after this, the disciplinary authority/competent authority is required to take a call under Section 12(4) of the Act of entrusting the enquiry under Rule 14-A of the Rules. Sub-section (3) of Section 12 mandates that report of the Lokayukta along with his findings, recommendations, relevant documents, materials and other evidence be forwarded to the competent authority. The gist of the report under Section 12(3) of the Act has found its place in the order of entrustment of the enquiry to the hands of the 2nd respondent-Lokayukta and is extracted hereunder for the purpose of ready reference.

- 1. "An investigation was taken up under section 9 of the Karnataka Lokayukta Act, on the basis of complaint filed by Shri Lingaraju S/o Suryakanthhuli, Channur, Chincholi Taluk, Kalaburagi District (hereinafter referred to as 'Complainant' for short) against (1) Shri. Nagendrappa S/o Sharanappa, Assistant*



Engineer, Lower Bund Mullamari Project Sub – Division, Chimanachoda, Chincholi Taluk, Kalaburgi and (2) Shri.Sanju Kumar, PDO, GandilingadhahalliGrama Panchayath, Chincholi Taluk, Kalaburgi District (hereinafter referred to as 'respondents 1 & 2 respectively' for short).

- 2. The allegation in the complaint is that the respondents have allowed on Smt. Mahananda W/o AdeppaHuli to construct a house in the land reserved for park near Chennur Rehabilitation Centre.*
- 3. The respondents have offered comments. The respondents have admitted the construction put up by the said Smt. Mahananda W/o Adeppa Huli in the land reserved for park.*
- 4. The respondents have not taken effectivesteps to remove the construction made on the land reserved for public park. The comments of respondents are not satisfactory. There is a prima – facie dereliction of duty on the part of the respondents. Therefore, he respondents have failed to maintain absolute integrity, devotion to duty and have acted in a manner which is unbecoming of a Government Servant for which they have made themselves liable for departmental action."*

20. Based upon this, the Government entrusted the enquiry to the hands of the 2nd respondent-Lokayukta on 7.1.2017 and a charge sheet was issued by the nominated Additional Registrar of Enquiry, Karnataka Lokayukta on 13.1.2017. The entire records pertaining to the enquiry was placed before us by the learned Counsel for the 2nd respondent-Lokayukta and it is necessary to extract the same from the inception till the issuance of the charge sheet. Relevant extracts of the order sheets pertaining to the case on hand maintained by the Karnataka Lokayukta, read as follows:

*" 1. Complaint stands
Allotted to :*

*DRE – 3
SCRUTINY AND OPINION
Examine and put up on or before
18.05.2015.*



NC: 2026:KHC:23472
WP No. 33924 of 2024

Sd/-
Upalokayukta – 1
14.05.2015

2) *I/c – DRE – 3*
prays time to verify and put up preliminary scrutiny note
by 28.06.2015.

Submitted for kind orders

Sd/-
18.05.2015
I/c – DRE – 3

3) *xxxx*

4) *xxxx*

5) *I/c DRE – 3*

The respondents have not submitted comments. The
postal ack. is also not returned by the postal authority.

Hence My Lord if approved, delivery status may be
secured through postal website and in the mean time
comments of respondents may be awaited by 24.10.2015.

Submitted for kind orders

Sd/-
22/7/15
I/c DRE –
3

6) *xxxx*

7) *I/c DRE – 3*

The respondents have not submitted comments.

Hence my Lord, if approved, a reminder may be sent to
respondents and comments may be awaited by 13.01.2016.

Submitted for kind orders

Sd/-
26/10
I/c DRE – 3

8) *xxxx*

9) *xxxx*



10) DRE – 3

The respondent No.1 has submitted comments by denying the complaint allegation whereas the respondent No.2 has not submitted comments. But the reminder was sent to him by an ordinary post.

Hence, my Lord if approved, one more reminder may be sent to respondent No.2 through our police at Gulbarga and his comments may be awaited by 04.04.2016.

Submitted for kind orders.

Sd/-
13.1.2016
DRE – 3

11) xxxx

12) xxxx

13) xxxx

14) DRE – 3

The PI, KLA, Kalaburgi has submitted a letter dated 01.02.2016 requesting one more time to serve the endorsement on respondent.

Hence my Lord, if approved, time may be granted to PI, KLA, Kalaburgi to serve the notice on respondent and served copy from the PI and comments from the respondent may be awaited by next date of hearing.

Submitted for kind orders.

Sd/-
4/2/16
DRE – 3

15) xxxx

16) xxxx

17) xxxx

18) DRE – 3

The respondent No.2 has submitted his comments dated 25.02.2016 by denying the complaint allegations. The respondent no.1 has already submitted his comments.



Hence, my lord, if approved, rejoinder may be called for from the complainant by forwarding copy of comments of respondents 1 and 2 and same may be awaited.

Submitted for kind orders.

*Sd/
2/3/16.
DRE – 3*

19) xxxx

20) xxxx

21) xxxx

22) DRE – 3

The complainant has not submitted rejoinder. The Postal Ack. is also not returned by the postal authorities.

Hence, my lord, if approved, the complainant may be reminded over phone and the rejoinder of the complainant may be awaited.

Submitted for kind orders

*Sd/-
05.04.16.
DRE – 3*

23) xxxx

24) xxxx

25) DRE – 3

When contacted the complainant over phone to submit rejoinder. The complainant has replied that he has not received this office endorsement and copy of comments of respondents.

Hence, my lord, if approved, a fresh notice may be sent to complainant through SP, KLA, Kalaburgi and his rejoinder may be awaited.

Submitted for kind orders.

*Sd/-
23/5/16.
DRE-3*

26) *Hon'ble Upalokayukta -1*

Send notice directly to the address of the complainant for rejoinder by 20.7.16.



Sd/-
23.05

27) xxxx

28) xxxx

29) DRE- 3

The RPAD cover sent to complainant calling his rejoinder is returned unserved with the postal endorsement as 'the party is no in the station, returned to sender.'

Hence, My Lord, if approved a fresh endorsement may be sent to complainant through Lokayukta Police at Kalaburagi and his rejoinder may be awaited.

Submitted for kind orders

Sd/-
20.7.16
DRE – 3

30) xxxx

31) xxxx

32) DRE – 3

It is respectfully submitted that due to paucity of time, Final Scrutiny Note could not be prepared and submitted today in this case.

33) *Therefore, My Lord, if approved, time may kindly be granted to put up Final Scrutiny Note.*

Submitted for kind orders.

Sd/
26.8.16.
DRE – 3

34) xxxx

35) xxxx

36) DRE – 3

It is respectfully submitted that due to paucity of time, Final Scrutiny Note could not be prepared and submitted today in this case.



- 37) *Therefore, My Lord, if approved, time may kindly be granted to put up Final Scrutiny Note.*

Submitted for kind orders.

*Sd/
22.9.16
DRE – 3*

- 38) *xxxx*

- 39) *xxxx*

- 40) *DRE – 3*

It is respectfully submitted that due to paucity of time, Final Scrutiny Note could not be prepared and submitted today in this case.

- 41) *Therefore, my lord, if approved, time may kindly be granted to put up Final Scrutiny Note.*

Submitted for kind orders.

*Sd/-
02.11.16
DRE – 3*

- 42) *Hon'ble Upalokayukta -1*

The complainant has alleged that respondents have allowed one Smt.Mahananda W/o AdeppaHuli to construct a house in the land reserved for park near Chennur Rehabilitation Centre.

- 43) ***The respondents have offered comments. The respondents have admitted the construction put up by the above Smt. Mahananda W/o AdeppaHuli in the land reserved for park.***

- 44) ***The respondents have not taken effective steps to remove the construction made on the land reserved for public park. There is prima facie dereliction of duty on the part of respondents. Put up draft of report under section 12(3) of Karnataka Lokayukta Act, in terms of this FSN by 18.11.2016.***

*Sd/- 5/11
(JUSTICE N. ANANDA)
Upalokayukta – 1
State of Karnataka, Bengaluru.*

- 45) *DRE-3*



Draft report under Sec.12(3) of the Karnataka Lokayukta Act, 1984 has been prepared and submitted for kind perusal and approval.

Submitted for kind orders

Sd/-
18.11.16.
DRE-3

46) xxxx

47) DRE – 3

Fair copy of report under Sec.12(3) of the Karnataka Lokayukta Act, 1984 as approved by his Lordship has been prepared and submitted for kind perusal and signature.

Submitted for kind orders.

Sd/-
03.12.16
DRE-3

48) xxxx

49) DRE – 3

The Acknowledgement for having received the report under Sec.12(3) of the Karnataka Lokayukta Act, 1984 along with required records by the office of Secretary to Government, RDPR & Secretary to Government, Water Resource Department are submitted for your honour's kind perusal.

The Competent Authorities have not issued compliance as required under Sec.12(4) of the Karnataka Lokayukta Act, 1984.

50) Hence, My Lord, if
 approved, Government Order from the
 Competent – Authorities may be awaited.

Submitted for kind orders.

Sd/-
7.12.2016
DRE – 3

51) xxxx

52) DRE – 3



The Competent Authority has issued Government Order vide No. RDP 863 GPS 2016, Bengaluru dated 07.01.2017 to hold departmental enquiry against respondent No.2 / Shri. Sanju Kumar, PDO, Gadilingadhalli, Chincholi Taluk, Kalaburgi District (Date of retirement 30.06.2035). The Government Order issued by the Competent Authority is in accordance with the recommendation made in the report under Sec. 12(3) of the Karnataka Lokayukta Act, 1984.

Copies of the report under Sec.12(3) of the Karnataka Lokayukta Act, 1984 dated 03.12.2016 & Government Order dated 07.01.2017 are submitted herewith for the favour of issuing nomination order.

In this case, no nomination order has been issued earlier.

Further, with respect to non receipt of Government order pertaining to respondent No.1, a separate note will be submitted before the Hon'ble Upalokayukta – 1 seeking further orders.

Sd/-
12.1.17.
DRE-3

53) Hon'ble Registrar
Put up draft nomination proceedings.

Sd/-
13/1
Registrar

54) *In view of the submission made by the Scrutiny Officer i.e., DRE-3, in Pre-paras, draft proceedings in No.UPLOK-1/DE/61/2017, for nominating the Inquiry Officer is submitted in the file for kind perusal.*

Sd/- 13.01.2017
Gazetted Assistant

55) Hon'ble Registrar

The Additional Registrar of Enquiries – 3 may kindly be nominated as the Inquiry Officer. Accordingly, draft proceedings are placed in the file for kind approval.

Sd/- 13/1



Registrar

56) Hon'ble Upalokayukta

ARE – 3 – is nominated

Sd/- 13/1
Upalokayukta,
State of Karnataka.

57) Registrar

Copies of Nomination proceedings signed.

Sd/- 13/1
Registrar

58) DRE – 3

In this case 12(3) report was sent against respondents 1 & 2.

The Competent Authority of respondent No.2 has issued Government Order. Based on the said Government Order, nomination order has already been issued and departmental enquiry against him is under process.

With respect to respondent No.1 who is an official belongs to Water Resource Department, the Competent Authority has not issued Government Order to hold departmental enquiry against him.

59) **Hence, my lord, if approved, a reminder may be sent to the Competent Authority of respondent no.1 and G.O. against him may be awaited.**

Submitted for kind orders.

Sd/-8.2.17
DRE – 3

60) xxxx

61) DRE – 3

In this case Nomination Order vide No.Uplok-1/DE/61/2017 has already been issued to hold departmental inquiry against respondent No.2. The said enquiry has been entrusted to ARE - 3.



Now, the Competent Authority of respondent no.1 has issued Government Order vide No. WRD 193 SDE 2016, Bengaluru dated 13.02.2017 to hold departmental enquiry against Shri.Nagendrappa S/o Sharanappa, Assistant Engineer, Lower0 Bund Mullamari Project sub-Division, Chimmanachola (respondent no.1). The Government Order issued by the Competent Authority is in accordance with the recommendation made in the report under Sec. 12(3) of the Karnataka Lokayukta Act, 1984.

Copies of the report under Sec.12(3) of the Karnataka Lokayukta Act, 1984 dated 03.12.2016 & Government Order dated 13.02.2017 along with copy of earlier nomination order are submitted herewith for the favour of issuing nomination order.

The date of retirement of respondent no.1 is 31.05.2030.

Sd/-
DRE – 3
1.3.17.

62) Hon'ble Registrar

Put up draft nomination proceedings.

Sd/- 3/3
Registrar

63) In view of the submissions made by the Scrutiny Officer i.e., DRE-3, at pre-paras, draft proceedings in No.UPLOK-1/DE/340/2017, for nominating the Inquiry Officer is submitted in the file for kind perusal.

Sd/-
Sr.J.W
03.03.17

64) Registrar

The Additional Registrar of Enquiries – 3 may kindly be nominated as the Inquiry Officer. Accordingly, draft proceedings are placed in the file for kind approval.

Sd/-
Registrar

65) Hon'ble Upalokayukta

ARE – 3 – is – nominated



Sd/-
Upalokayukta
State of Karnataka

66) Registrar

Copies of Nomination Proceedings signed.

Sd/- 4/3
Registrar

67) DRE – 3

In view of the nomination orders vide No.UPLOK-1/DE/61/2017 dtd.13.01.2017 & UPLOK-1/DE/340/2017dtd. 03.03.2017, records have been sent to ARE-3 to proceed with the enquiry against the respondents.

68) Hence, kind orders are sought to send this complaint file to records under 'B' disposal

Submitted for kind orders.

Sd/-
13.3.17
DRE – 3

69) xxxx "

Two glaring facts emerge from the entire order sheet maintained by the office of the 2nd respondent-Lokayukta concerning the enquiry against the petitioner would clearly indicate that the Lokayukta insisted upon the enquiry to be entrusted to its hands and at note No.61, it is clearly indicated that the competent authority had issued the Government Order entrusting the enquiry to the Lokayukta and the Government Order issued was in accordance with the recommendation made in its report under section 12(3) of the Act.

21. Thus, it becomes clear that no discretion is exercised by the competent authority to take a decision,



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as to whether the enquiry has to be entrusted into the hands of the 2nd respondent-Lokayukta or otherwise. It is a clear case of the competent authority abdicating its discretion to an external agency like the 2nd respondent-Lokayukta.

22. Sub-section (4) of Section 12 of the Act casts aduty upon the competent authority to examine the report forwarded to it and then take a decision after such examination. A bare perusal of the order entrusting the enquiry under Rule 14-A of the Rules depicts flagrant violation of Section 12(4) of the Act as the competent authority has not even examined as required under Section 12(4) of the Act as to whether enquiry requires to be entrusted to Lokayukta or is there any grievance worthwhile to hold an enquiry again the petitioner. All that the order dated 7.1.2017 would say is the extract of the findings in the report to the Lokayukta under Section 12(3) of the Act and the fact that the Upa-Lokayukta has sought enquiry to be entrusted to itself and in those circumstances, the enquiry was entrusted. Perusal of the order sheet would clearly indicate that the reminders were sent to the competent authority by the 2nd respondent to entrust the enquiry to itself.

23. The unequivocal fact that would emerge, fromour consideration above, is that the disciplinary authority/competent authority has surrendered its discretion of decision making to the dictates of the 2nd respondent-Lokayukta thereby abdicating its duty cast



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under Section 12(4) of the Act. Abdication of ones discretion in decision making and capitulating to the dictates of the external agency amounts to itself nonapplication of mind in view of the law laid down by the Hon'ble Supreme Court in case of STATE OF U.P. VS. MAHARAJA DHARMANDER PRASAD SINGH reported in (1989)2 SCC 505, wherein the Hon'ble Supreme Court at paragraph 55 has held as follows :

55. It is true that in exercise of powers of revoking or cancelling the permission is akin to and partakes of a quasi-judicial complexion and that in exercising of the former power the authority must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party and decide the matter consistent with the principles of natural justice.

The authority cannot permit its decision to be influenced by the dictation of others as this would amount to abdication and surrender of its discretion. It would then not be the authority's discretion that is exercised, but someone else's. If an authority "hands over its discretion to another body it acts ultra vires". Such an interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the authority. De Smith sums up the position thus:

"The relevant principles formulated by the courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories: failure to



exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutually exclusive."

*In a subsequent judgment, the Hon'ble Supreme Court in the case **ANIRUDHSINHJI KARANSINHJI JADEJA V. STATE OF GUJARAT** reported in (1995) 5 SCC 302 at paragraphs 12 to 14 has held as follows :*

12. Reference may be made in this connection to Commr. of Police v. Gordhandas Bhanji [1952 SCR 135 : AIR 1952 SC 16] , in which the action of Commissioner of Police in cancelling the permission granted to the respondent for construction of cinema in Greater Bombay at the behest of the State Government was not upheld, as the rules concerned had conferred this power on the Commissioner, because of which it was stated that the Commissioner was bound to bear his own independent and unfettered judgment and decide the matter for himself, instead of forwarding an order which another authority had purported to pass.

13. It has been stated by Wade and Forsyth in Administrative Law, 7th Edn. at pp. 358-59 under the heading "Surrender, Abdication, Dictation" and sub-heading "Power in the wrong hands" as below:

"Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with someone else, or may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them...."

Ministers and their departments have several times fallen foul of the same rule, no doubt equally to their surprise...."

14. The present was thus a clear case of exercise of power on the basis of external dictation. That the dictation came on the prayer of the DSP will not make any difference to the principle. The DSP did not exercise the jurisdiction vested in him by the statute and did not grant approval to the recording of information under TADA in exercise of his discretion.



24. *In terms of the law declared by the Hon'ble Supreme Court in the afore extracted judgments, it becomes unmistakably clear that discretion, which is surrendered to an external agency, would itself suffer from the vice of non-application of mind.*

25. *The report under Section 12(3) of the Act is communicated by the 2nd respondent-Lokayukta to the competent authority and in terms of the report, entrustment of enquiry was ordered to the hands of the 2nd respondent under Section 12(4) of the Act. The statute mandates examination of the material before the enquiry is entrusted. The word 'examine' means to 'test critically' as defined in the Major Law Lexicon 4th edition 2010 Lexis-Nexis-Butterworth-Wadhwa-Nagpur at page 2455. The words 'consider' and 'examine' are synonyms (see Roget's International Thesaurus, 3rd Edition Oxford Book Company, page No.765 and 316). The importance of the word consider and its purport has been elucidated by the Hon'ble Supreme Court in the case of BARIUM CHEMICALS LTD AND ANOTHER VS. SH. A. J. RANA AND OTHERS reported in (1972)1 SCC 240 wherein the Hon'ble Supreme Court has interpreted the word 'consider' which is nothing but examination. In paragraphs 14 and 15 of the aforesaid judgment, the Hon'ble Supreme Court has held as follows:*

14. The words "considers it necessary" postulate that the authority concerned has thought over the matter deliberately and with care and it has been found necessary as a result of such thinking to pass the order. The dictionary meaning of the word "consider" is "to view attentively, to survey, examine, inspect (arch), to look attentively, to contemplate



mentally, to think over, meditate on, give heed to, take note of, to think deliberately, bethink oneself, to reflect” (vide Shorter Oxford Dictionary). According to Words and Phrases — Permanent Edition Vol. 8-A “to consider” means to think with care. It is also mentioned that to “consider” is to fix the mind upon with a view to careful examination; to ponder; study; meditate upon, think or reflect with care. It is therefore, manifest that careful thinking or due application of the mind regarding the necessity to obtain and examine the documents in question is sine qua non for the making of the order. If the impugned order were to show that there has been no careful thinking or proper application of the mind as to the necessity of obtaining and examining the documents specified in the order, the essential requisite to the making of the order would be held to be non-existent.

15. A necessary corollary of what has been observed above is that mind has to be applied with regard to the necessity to obtain and examine all the documents mentioned in the order. An application of the mind with regard to the necessity to obtain and examine only a few of the many documents mentioned in the order, while there has been no such application of mind in respect of the remaining documents, would not be sufficient compliance with the requirements of the statute. If, however, there has been consideration of the matter regarding the necessity to obtain and examine all the documents and an order is passed thereafter, the Court would stay its hand in the matter and would not substitute its own opinion for that of the authority concerned regarding the necessity to obtain the documents in question.

Subsequently, the Hon’ble Supreme Court in the case of LIC Vs. A. MASILAMANI, reported in (2013) 6 SCC 530 at paragraph 19 has held as follows :

19. The word “consider” is of great significance. The dictionary meaning of the same is, “to think over”, “to regard as”, or “deem to be”. Hence, there is a clear connotation to the effect that there must be active application of mind. In other words, the term “consider” postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority should reflect intense application of mind with reference to the material available on record. The order of the authority itself should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority and proceed to affirm its order. (Vide Indian Oil Corpn. Ltd. v. Santosh Kumar [(2006) 11 SCC 147 : (2007) 1 SCC (L&S) 388] and Bhikhubhai Vithlabhai Patel v. State of Gujarat [(2008) 4 SCC 144 : AIR 2008 SC 1771] .)



*If the case on hand is examined in terms of the law declared by the Hon'ble Supreme Court as extracted herein above, it unequivocally demonstrates non-application of mind by the competent authority. It is apposite to refer to a Judgment of the learned Division Bench of this Court in an identical case involving a challenge to the order of entrustment in the case of **KARNATAKA LOKAYUKTA Vs. H.N. NIRANJAN & ANOTHER** reported in **2017(6) KLJ 80**, wherein it is held as follows :*

3. It appears that the tribunal has exercised the power of allegiance breach and noncompliance to the provisions of section 12(4) of the Karnataka Lokayukta act, 1984. The relevant reasoning recorded by the tribunal in the impugned order at para-7 reads as under: One other ground urged on behalf of the applicant is that there is non-compliance of Section 12(4) of the Lokayukta Act by the first respondent while taking further action on the recommendation made by the Hon'ble UpaLokayukta in the report under Section 12(3) of the Lokayukta Act. Section 12(4) of the Lokayukta Act reads as follows:-

"The Competent Authority shall examine the report forwarded to it under subsection (3) and within three months of the date of receipt of the report, intimate or cause to be intimated to the Lokayukta or the Upa-Lokayukta the action taken or proposed to be taken on the basis of the report."

Inviting our attention to Section 12(4) of the Lokayukta Act, it is contended by the learned Counsel for the applicant that a reading of the impugned order dated 12.11.2013 prima facie indicates that there is non-compliance for Section 12(4) of the Karnataka Act by the first respondent, for the reason that the first respondent has failed to examine the report forwarded under Section 12(3) of the Lokayukta Act before ordering departmental enquiry in the matter. In the preamble to the Government Order dated 12.11.2013, paras – 1 and 2 relate to the substance of the recommendation made by the UpaLokayukta. In para – 3 of the Government Order, it is stated that as recommended by the Hon'ble UpaLokayukta, it has been decided to hold disciplinary proceedings against the applicant and to entrust the same to UpaLokayukta. It has not been mentioned in the impugned order dated 12.11.2013, that the first respondent has examined the report



sent under Section 12(3) of the Lokayukta Act. When the statute mandates examination of the report sent under Section 12(3) of the Lokayukta Act, it is the bounden duty of the Competent Authority to which the said report is sent, to examine the report before taking any decision on the recommendation made in the report under Section 12(3) of the Lokayukta Act. The object of examination of the report sent under Section 12(3) of the Lokayukta Act is to ensure that the public servant concerned is not subjected to any unwarranted disciplinary action. When the statute mandates examination of the report, the Competent Authority has to comply such mandates and failure in that regard invalidates the decision taken on such report. A reading of the impugned Government Order dated 12.11.2013 nowhere indicates that the first respondent has examined the report sent under Section 12(3) of the Lokayukta Act. It is only stated that as recommended by the Hon'ble UpaLokayukta, it has been decided to hold disciplinary proceedings and to entrust the same to UpaLokayukta concerned. It can be certainly said that the omission of the first respondent in this regard, which amounts to non-compliance of the mandatory requirement of Rule 12(4) of the Lokayukta Act, has resulted in the vitiation of the order dated 12.11.2013 passed by the first respondent. We have to note in this case that in the complaint filed before the Karnataka Lokayukta in the matter, there was no allegation against the applicant the name of the applicant figures in the case for the first time in the report submitted by the Technical Wing of the Karnataka Lokayukta. It is Submitted On Behalf Of the Applicant That the Assistant Executive Engineer concerned was the implementation officer as regard to the concerned work and that the applicant cannot be held to be liable for any irregularity in the matter. The contentions of the applicant in this regard in the above facts are required to be examined by the first respondent while considering the recommendation made by the Upa-Lokayukta in the report under section 12(3) of the Lokayukta act. It is for the said reason, the competent authority concerned has been mandated to examine the report forwarded to it under section 12(3) of the Lokayukta act. At the cost of repetition, we may point out that nowhere in the impugned order report under section 12(3) of the Lokayukth act has been examined by the first respondent before passing the order dated 12.11.2013 directing initiation of departmental inquiry against the applicant. The Competent Authority has blindly accepted the recommendation made in the report sent under section 12(3) of the Lokayukta Act and directed initiation of inquiry against the applicant. Having regard to the same, the order of initiation of departmental inquiry against the applicant and entrustment of the inquiry to the Hon'ble Upa-Lokayukta as per order dated 12.11.20 13 will have to be quashed. Consequently, all further proceedings pursuant to the said order, particularly issuance



of articles of charge dated 20.01.2014 cannot be sustained. However, the first respondent will be at liberty to examine the report and take appropriate action in the matter."

5. It is not the case of the petitioner herein, that the State Government has independently considered the matter under section 12(4) Of the Lokayukta Act and thereafter had passed the order. But the only contention raised by the learned counsel appearing for the petitioner is that in the preamble of the order the State Government has referred to the contents of the recommendation of the Lokayukta and therefore it may be considered as deemed consideration by the State Government and resultantly compliance to section 12(4) of the Act.

6. We are afraid that such contention can be accepted. What is required to be considered as per the provisions of 12(4) of the act is consideration and application of mind by the Government for concurring with the opening of the Lokayukta, for initiation of inquiry. When There Is No Examination of the Case by the Government under Section 12(4) of the Act. It cannot be said that the tribunal had committed any error which may call for any interference by this Court.

In terms of the facts narrated hereinabove, perusal of the entire order sheet pertaining to the case and the law declared in the afore-extracted judgments, the order of entrustment impugned, entrusting the enquiry to the hands of the 2nd respondent to the hands of the 2nd respondent - Lokayukta suffers from non application of mind and is vitiated. The point is answered accordingly.

26. Re. Point No.2:

To consider this point in terms of the submission made by learned Counsel for the respondent No.2Lokayukta, the provisions under which the Lokayukta would get jurisdiction to hold an enquiry against a Government Servant requires to be noticed. The relevant Rule i.e. Rule 14-A of the Rules is extracted hereunder for the purpose of ready reference.



“Rule 14-A: Procedure in cases entrusted to the Lokayukta: (1) The provisions of sub-rule (2) shall, notwithstanding anything contained in rule 9 to 11A and 13, be applicable for purposes of proceeding against Government Servants whose alleged misconduct has been investigated into by the Lokayukta or an Upalokayukta either under the provisions of the Karnataka Lokayukta Act, 1984 or on a reference from Government. 3 [or where offences alleged against them punishable under the Prevention of Corruption Act, 1947, or the Prevention of Corruption Act, 1988 has been investigated by the Karnataka Lokayukta Police before 21st day of December, 1992.]

(2) (a) Where on investigation into any allegation against –

(i) a member of the State Civil Services Group-A or Group-B; or

(ii) a member of the State Civil Services Group-A or Group-B and a member of the State Civil Services Group-C or Group-D; or

(iii) a member of the State Civil Services Group-C or Group-D, [the Lokayukta or the Upa-lokayukta or, (before the twenty first day of December, 1992), the Inspector General of Police of the Karnataka Lokayukta Police is of the opinion], that disciplinary proceedings shall be taken, he shall forward the record of the investigation along with his recommendation to the Government and the Government, after examining such record, may either direct an inquiry into the case by the Lokayukta or the Upalokayukta or direct the appropriate Disciplinary Authority to take action in accordance with Rule 12.

(b) Where it is proposed to hold an inquiry into a case under clause (a) the enquiry may be conducted either by the Lokayukta or the Upalokayuka, as the case may be, or an officer on the staff of the Lokayukta authorised by the Lokayukta, or the Upalokayukta to conduct the inquiry;

Provided that the inquiry shall not be conducted by an officer lower in rank than that of Government servant against whom it is held.

Provided further that an inquiry against a Government Servant not lower in rank than that of a Deputy Commissioner shall not be conducted by any person other than the Lokayukta or the Upalokayukta or an Additional Registrar (Inquiries).

Provided also that an officer on the staff of the Lokayukta authorised to conduct an inquiry under clause (b)



shall not have the power to appoint another officer to conduct it wholly or in part.

(c) The Lokayukta, the Upalokayukta or the Officer authorised under clause (b) to conduct an inquiry shall conduct it in accordance with the provisions of rule 11 in so far as they are not inconsistent with the provisions of this rule and for that purpose shall have the powers of the Disciplinary Authority referred to in the said Rule.

(d) After the inquiry is completed, the record of the case along with the findings of the Inquiring Officer and the recommendation of the Lokayukta or the Upalokayukta, as the case may be, shall be sent to the Government.

(e) On receipt of the record under clause (d) the Government shall take action in accordance with the provisions of 1 [xxx] Rule 11-A and in all such cases the Government shall be the Disciplinary Authority competent to impose any of the penalties specified in Rule 8.

(3) Nothing in sub-rule (1) shall be applicable to members of the Karnataka Judicial Service or Government servants under the administrative control of such members or of the High Court of Karnataka.

(Explanation.- In this rule, the expressions 'Lokayukta' and 'Upalokayukta' shall respectively have the meaning assigned to them in the Karnataka Lokayukta Act, 1984, and the expression 'Karnataka Lokayukta Police' means the Police Wing established under Section 15 of the Karnataka Lokayukta Act, 1984 and includes, so far as may be, the corresponding establishment under the Karnataka State Vigilance Commission Rules, 1980, and the Expression 'Inspector General of Police' shall be construed accordingly.

27. Relying upon the afore-extracted provisions, learned Counsel for the respondent No.2 in particular Rule 14-A (2) (a) (iii) would contend that if the investigation is conducted by the Lokayukta, the Government has no other option, but to entrust the enquiry to the Lokayukta.

28. We are unable to accept the contention. Rule 14-A(2) (a) (iii) cannot be read in isolation, it has to be read along with the other clauses under Rule 14-A.



Rule 14-A(1) enumerates classes of cases to which Rule 14-A would apply Sub-Rule (2) commands that record of investigation should be forwarded by the Lokayukta to the disciplinary authority with his recommendation and Government after examining such record shall take a decision either to entrust the inquiry to the Lokayukta or Upa-Lokayukta or direct the appropriate authority to resort to Rule 12 which would be for imposition of a minor penalty. A further reading of the other clauses would clearly indicate the purport of the provision relied on by the learned counsel for the second respondent, Clauses (d) and (e) of Rule 14-A would clearly indicate that after the inquiry is completed, the record of the case along with the findings of the inquiring officer and the recommendation of the Lokayukta or the Upa Lokayukta as the case may be, Shall be sent to the Government, clause (e) mandates that on receipt of the record under clause (d) the Government shall take action in accordance with the provisions of Rule 11-A and in all such cases the Government shall be the disciplinary authority competent to impose any of the penalties specified in Rule 8.

29. A conjoint reading of the provisions indicated herein above would unequivocally make it clear that the discretion is available to the Government to entrust the inquiry to the second respondent or otherwise in case the Government is of the opinion that it is a case only for imposition of minor penalty under Rule 12, where there is no necessity to hold regular departmental inquiry,



it may advise the appropriate disciplinary authority to take action for imposition of such minor penalty, this provision would not mean that when the disciplinary authority is of the opinion that a major penalty should be imposed or in all cases where proceedings under minor penalties are not taken up, the inquiry has to be entrusted to the Lokayukta. This interpretation of the second respondent that the inquiry has to be entrusted to the Lokayukta, once the investigation is conducted by them and a report is submitted to the Government under Section 12(3) would render the power of the Government or the discretion of the Government being completely taken away and rendering the provision nugatory. This is not the purport of the statute. The law with regard to discretion as discussed in the preceding paragraphs with regard to point No.1, would be applicable to this contention as well. This point is accordingly answered in favour of the petitioner.

30. **Re. Point No.3**

The Tribunal, by the impugned order, has rejected the challenge of the petitioner to the order of entrustment on the ground that it is premature and the petitioner does not have a right to question the order of entrustment at that stage of the proceedings. The Tribunal has followed the judgment rendered by a Coordinate Bench in Writ Petition No.104460/2018 and connected cases, by its order dated 10.09.2018. The facts obtaining in the aforementioned judgment of learned Division Bench are



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completely distinguishable with the facts obtaining in the instant case on hand. The Tribunal has failed to notice that the grounds that were urged before the Tribunal in the instant case were completely different to the one considered in the aforementioned judgment. The issue before the learned Division Bench was not with regard to non-application of mind by the competent authority at the time of entrustment of the inquiry to the hands of the second respondent or that of the abdication of the decision making power by the competent authority to the hands of an external agency like that of the second respondent.

31. The issues in the present case never fell for consideration before the learned Division Bench in the writ petition mentioned hereinabove. The Tribunal has misdirected itself in placing reliance on the judgment of the coordinate bench without looking into the facts and issues considered therein. There can be no dispute with the principle laid down in the judgment of the coordinate bench following the judgment of the Hon'ble Supreme Court, on the issue as to whether a writ petition would be maintained on merits of the charge sheet, but its applicability qua the facts had to be analysed.

32. Though the charge sheet issued subsequent to the order of entrustment is under challenge in the instant writ petition, the principal challenge is to the order of entrustment and the examination by the Tribunal ought to have been with regard to the order of entrustment. The



Tribunal has placed reliance on the judgment of the coordinate bench without looking into the facts of the case that was considered by the learned Division Bench. It is settled principle of law that each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. One additional or different fact may make a difference between conclusions in two cases.

33. *As stated hereinabove, the facts of the case before the Tribunal were different from the facts in the judgment which the Tribunal has placed reliance on. On the contrary, the finding of the Tribunal runs completely counter to the law laid down by the by this court in the case of H.N. Niranjan (Supra), wherein it is clearly affirmed that the if the order of entrustment does not bear application of mind, it would sometimes result in unnecessary proceedings against the Government servant. Here is also a case, if the proceedings are permitted to be continued would result in unnecessary hardship to the petitioner as the property alleged to have constructed is in civic amenity site, which comes under the rehabilitation scheme / project of the KNNL and the petitioner being a PDO of the Gram Panchayat will not get jurisdiction to demolish the property of another department unless the property is brought under the Gram Panchayat. This is an admitted fact by the 2nd respondent-Lokayukta and the learned Counsel appearing for KNNL and the Government that the*



property is yet to be transferred to the hands of the jurisdictional Grama Panchayat. When the property itself is not coming under the jurisdiction of the petitioner, there can be no dereliction of duty, as alleged by the Lokayukta in its report under Section 12(3) of the Act. If the petitioner had no duty to perform with regard to the allegations, it cannot be alleged to be dereliction of his duty amounting to misconduct. Thus, the Tribunal ought to have interfered with the order of entrustment dated 7.1.2017 as it was completely contrary to law. In the peculiar facts of the case, the order of the Tribunal, impugned herein, warrants appropriate interference.

34. *For the aforementioned reasons, we pass the following:*

ORDER

(i) *The writ petition is allowed.*

(ii) *The order of the Tribunal dated order dated 3.10.2019 is set aside and the application No.2127/2017 is allowed.*

(iii) *The order of entrustment dated 7.1.2017, issued by Government/Competent Authority/Disciplinary Authority and the consequent charge sheet dated 13.1.2017 are hereby quashed.*

(iv) *There shall be no order as to costs."*



6. In the instant case as stated supra, respondent No.1-State specifically addressed three communications/letters dated 15.10.2022, 30.01.2024 and 12.08.2024 calling for certain documents from BBMP and despite the same having not been received by respondent No.1, respondent No.1 specifically passed the impugned order, which suffers from non application of mind warranting interference of this Court in the present petition.

7. Under the aforesaid facts and circumstances of the case, I deem it just and appropriate to allow the petition by issuing certain directions. In the result, I pass the following:

ORDER

- i) The petition is hereby allowed.
- ii) The impugned order dated 08.11.2024 passed by respondent No.1 is hereby set aside.
- iii) Liberty is reserved in favour of respondent No.1 – State as well as respondent No.2 – BBMP to reconsider the matter afresh and proceed further in accordance with law.



iv) It is needless to state that the time spent by the parties in the present petition shall be excluded for the purpose of limitation.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE