IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR.JUSTICE S.G.PANDIT

WRIT PETITION.NO.46 OF 2018 (S-RES)

BETWEEN

T G ACHUTHA RAO,
S/O. GOVIND RAO,
AGED 54 YEARS, WORKING AS
WATER INSPECTOR, BANGALORE
WATER SUPPLY AND SEWERAGE
BOARD, R/AT #39, 7TH CROSS,
ATMANANDA COLONY,
SULTAN PALYA, BANGALORE-560032.

...PETITIONER

(BY SRI. M.S.RAJENDRA PRASAD, SENIOR COUNSEL FOR
SRI. PRANOY KUMAR, ADVOCATE)

AND

1. BANGALORE WATER SUPPLY AND
   SEWERAGE BOARD,
   1ST FLOOR, KAVERI BHAVAN,
   KEMPEGOWDA ROAD,
   BANGALORE-560009.

2. THE KARNATAKA LOKAYUKTA,
   MULTISTORIED BUILDING,
   DR. AMBEDKAR VEEDHI,
   BANGALORE-560001.
   REP. BY ITS REGISTRAR.

3. THE ADDITIONAL REGISTRAR OF ENQUIRES-03,
KARNATAKA LOKAYUKTA,
DR. B.R.AMBEDKAR VEEDHI,
BANGALORE-560001. REP. BY

…RESPONDENTS

(BY SRI. B.L.SANJEEV, ADVOCATE FOR R1
SRI. VENKATESH.S.ARABATTI, ADVOCATE FOR R2 & 3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION BY THE R-1 ISSUED DATED 31.1.2017 AS PER ANNEX-A AND ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THROUGH VIDEO CONFERENCE, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court under Article 226 of the Constitution of India, praying for the following reliefs:

a) Issue of Writ of Certiorari quashing the Notification by the 1st Respondent issued in No.BWSSB/MAA-K/CG-16/4128 of 2016-2017 dated 31-01-2017 as per Annexure A and

b) Corrigendum issued by the 1st Respondent in No BWSSB/MAA-K/CG-16/4223 dated 06-02-2017 as per Annexure-B and

c) Issue of Writ of Certiorari quashing Articles of charge issued by the 2nd & 3rd Respondents in No.UPLOK-1/DE/440/2017/ARE-3, dated 13-09-2017 addressed to Petitioner calling upon him to submit reply to the charge Memo as per Annexure C.

c(1) to issue of Certiorari quashing the report of the 2nd Respondent submitted to the 1st Respondent in number Complaint/UPLOK/BCD/1164/13/DRE-1 dated 07-11-2016 as per Annexure-F.

2. The petitioner is working as Water Inspector in respondent No.1-Bangalore Water Supply & Sewerage Board (for short 'the Board'). When the petitioner was working at R.T.Nagar, Sub-Division, a complaint came to be filed before respondent No.2-Lokayukta against the petitioner and two others alleging that they were

demanding illegal gratification for providing water connection to the House bearing No.39. Thereafter, the said complaint was investigated and respondent No.2 forwarded report under Section 12(3) of the Karnataka Lokayukta Act, 1984 (for short 'the Act') to the Board. The Board under Notification dated 31.01.2017 entrusted enquiry to respondent No.2-Lokayukta. Respondent No.2-Lokayukta under Annexure-C, bearing No.UPLOK-1/DE/440/2017/ARE-3 issued Articles of Charge dated 13.09.2017. The petitioner is before this Court aggrieved by the Report under Section 12(3) of the Act, entrusting enquiry to the Lokayukta as well as charge memo issued by respondent No.2.

3. Heard Sri. M.S.Rajendra Prasad, learned Senior Counsel for the petitioner and Sri. B.L.Sanjeev, learned counsel for respondent No.1 as well as

Sri. Venkatesh.S.Arabatti, learned counsel for respondent Nos.2 and 3.

4. Learned Senior Counsel would submit that the petitioner is an employee of respondent No.1-Board and as such respondent Nos.2 and 3 would have no jurisdiction to conduct enquiry against the petitioner. Respondent Nos.2 and 3 have no jurisdiction over the petitioner under the provisions of the Act and as such, the entire proceedings initiated against the petitioner is wholly without jurisdiction. Further, learned Senior Counsel would submit that even though the petitioner submitted reply on 15.07.2013, respondent Nos.2 and 3 kept quiet for more than three years to submit report under Section 12(3) of the Act. As such, there is delay in initiating the proceedings. Learned Senior Counsel also would submit that the complaint would not constitute any misconduct as there is no demand and acceptance of bribe. No enquiry could have been

initiated when the complaint would not disclose any misconduct. There is no application of mind by the respondents on the complaint and initiation of enquiry against the petitioner is mechanical one. Thus, he prays for allowing the writ petition.

5. Sri. B.L.Sanjeev, learned counsel appearing for respondent No.1-Board would submit that the writ petition challenging the initiation of enquiry and charge memo would not be maintainable. Further, he submits that the employees of the Board are public servants and the Board has adopted the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 (for short 'the Rules') for the purpose of conducting disciplinary enquiry. Further, learned counsel would submit that the Division Bench of this Court in a decision reported in ILR 2016 KAR 2051 in the case of ***SRI S.V. RAMESH VS. STATE OF KARNATAKA, DEPARTMENT OF URBAN***

DEVELOPMENT AND OTHERS has held that the employees of the Board are amenable to the jurisdiction of respondent Nos.2 and 3. Thus, he prays for dismissal of the writ petition.

6. Sri. Venkatesh.S.Arabatti, learned counsel for respondent Nos.2 and 3 would submit that the writ petition challenging charge memo would not be maintainable as there is no cause of action for the petitioner. Further, he submits that charge memo could be challenged only on the ground of incompetence. But in the instant case, the petitioner being an employee of respondent No.1-Board, he would be amenable to the jurisdiction of respondent Nos.2 and 3.

7. The petitioner is working as Water Inspector in respondent No.1-Board. On the complaint against the petitioner and two others, respondent No.2 conducted

investigation under Section 9 of the Act and submitted report under Section 12(3) of the Act. Respondent No.1-Board on examination of the report under Section 12(4) of the Act, issued notification dated 31.01.2017 entrusting enquiry against the petitioner to respondent Nos.2 and 3. The contention of the learned Senior Counsel that since the petitioner is an employee of the Board, the provisions of the Act has no application and respondent Nos.2 and 3 have no jurisdiction to enquire is no more *res-integra.* This Court in Sri. S.V.Ramesh case referred to supra dealing with an identical contention at Paragraph Nos.7, 8, 10, 14 and 15 has held as follows:

> "7. Under Section-124 of the BWSSB Act, 1964 all Officers and servants of the Board shall be deemed to be public servants within the meaning of Section 21 of the IPC and the Prevention of Corruption of Act, 1947. The words, "State Government" and "Government" in Section 161 of the IPC (as it existed prior to amendment of IPC of the year 2013 i.e, prior to 3.2.2013) shall for the purposes of sub-

Section (1) of Section 124 of the BWSSB Act be deemed to include the Board. Thus it is clear from Section 124 of the BWSSB Act that the Officers of BWSSB are treated as public servants within the meaning of Sections 21 and 161 of IPC (prior to amendment as mentioned supra) as well as under the provisions of Prevention of Corruption Act (after amendment of IPC w.e.f 3.2.2013).

8. The Notification bearing No. SWL. 72. LBW. 82 dated 12th October, 1982 issued by the Government of Karnataka states that the Karnataka Civil Service Rules etc., are adopted by BWSSB. It is made clear in the very Notification that BWSSB shall follow Karnataka Civil Service Rules etc., till the service regulations of BWSSB are formulated. Notification No. BWSSB/CAO-S/112/Est-1/4163/2005-06 dated 1.3.2006 issued by BWSSB discloses that the Board has accorded approval to delegate to the Chairman of the Board the power to impose major penalties as specified in Rule 8(v) to (viii) of CCA Rules on the employees holding posts for which the Chairman is the Appointing Authority. In view of the aforementioned Notifications, it is evident that CCA Rules are applicable to BWSSB employees also for the purposes of conducting investigation and disciplinary enquiry.

10. Rule 14-A of the CCA Rules states that the provisions of Sub-Rule (2) of Rule 14-A shall,

notwithstanding anything contained in Rules 9 to 11-A and 13 of CCA Rules, be applicable for purposes of proceeding against Government servants whose alleged misconduct has been investigated into by the Lokayukta or an Upa-Lokayukta either under the provisions of the Karnataka Lokayukta Act or on reference from Government. Sub-Rule (2) of Rule 14-A deals with investigation and enquiry by Lokayukta or Upa-Lokayukta. A reading of Rule 14-A of CCA Rules in its entirety makes it further clear that Lokayukta or Upa-Lokayukta may conduct investigation and enquire into the allegations made against the Government servant and after completion of the enquiry, the record of the case along with the findings of the Enquiry Officer and recommendation of the Lokayukta or Upa-Lokayukta shall be sent to Government.

14. Section 9 of the Karnataka Lokayukta Act contains the provisions relating to complaints and investigations against the public servant. As per the said provision, any person may make a complaint under the Karnataka Lokayukta Act to the Lokayukta or an Upa-Lokayukta. Where a complaint is made, and if the Lokayukta or Upa-Lokayukta proposes, after making such preliminary inquiry as he deemed fit, to conduct any investigation under Lokayukta Act, he shall forward a copy of the complaint to the concerned public servant and the

Competent Authority concerned. In case of an investigation initiated suo moto by the Lokayukta or Upa-Lokayukta, the opinion recorded by him to initiate investigation will be forwarded to the public servant and the Competent Authority concerned. Thereafter the public servant will be afforded an opportunity to offer his comments on such complaint and thereafter the investigation will take place as prescribed under Section 9 of the Karnataka Lokayukta Act.

15. From the aforementioned discussion, it is amply clear that by virtue of the Notifications dated 12.10.1982 and 1.3.2006 mentioned supra, the CCA Rules are made applicable to the BWSSB officials also. Thus aforementioned provisions of CCA Rules clearly depict that disciplinary action can be initiated against the petitioner (BWSSB employee) without taking consent of BWSSB under the provisions of Lokayukta Act. Moreover as clarified by us in the aforementioned paragraphs, the petitioner falls within the definition of 'public servant' as found under Section 2(12)(g) of the Karnataka Lokayukta Act. Hence, there is no hurdle for Upa-Lokayukta to investigate into the matter and to submit the report under Section 12(3) of the Karnataka Lokayukta Act. So also there is no bar for the State Government to entrust the matter for disciplinary enquiry to Upa-Lokayukta as per

> the provisions of Section 12(4) of the Karnataka Lokayukta Act."

In view of the principles laid down in the above decision of the Division Bench, the first contention of the petitioner that respondent Nos.2 and 3 have no jurisdiction fails.

8. Learned Senior Counsel further contended that a reading of the complaint would not disclose any misconduct and there is no proper application of mind on the part of respondent No.1-Board while entrusting enquiry to respondent Nos.2 and 3. Further, it is also contended that there is delay in initiating the enquiry. The petitioner is before this Court at the stage of issuance of Articles of Charge. At this stage, this Court under Article 226 of the Constitution of India could interfere only if the charge sheet or charge memo is issued by an incompetent Authority nor by an Authority having no jurisdiction. Whether it

amounts to misconduct or whether there is any substance in the charge is a matter for enquiry. The petitioner would get an opportunity to defend himself before the Enquiry Officer. Moreover, the Hon'ble Apex Court in the case of ***SECRETARY, MINISTRY OF DEFENCE AND OTHERS*** vs. ***PRABHASH CHANDRA MIRDHA*** reported in **(2012) 11 SCC 565** at paragraph No.10 has held as follows:

> "10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. (Vide : State of U.P. v. Brahm Datt Sharma[25], *Bihar State Housing Board v. Ramesh Kumar Singh*[26] , *Ulagappa v. Commr*[27], *Special Director v. Mohd. Ghulam Ghouse*[28] , *Union of India v. Kunisetty Satyanarayana*[29]."

9. In the above decision, the Hon'ble Apex Court has made it clear that law does not permit quashing of charge sheet in a routine manner. Further, the Hon'ble Apex Court has held that while considering the delay, gravity of the charge and all relevant factors are to be taken into consideration. In the instant case, the charge against the petitioner is allegation of dereliction of duty and providing illegal water connections. As the charge sheet would not adversely affect the right of the petitioner nor the petitioner has established any prejudice at this stage, it may not be proper for this Court to entertain the writ petition challenging the charge sheet/charge memo.

For the reasons stated above, the writ petition stands rejected.

SD/-
JUDGE

SMJ