

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.26398/2018 (S – RES)

BETWEEN

SRI K.H.LOKANIRANJAN
S/O PATEL HANUMAPPA,
AGED 58 YEARS,
WORKING AS ASSISTANT ENGINEER,
KARNATAKA RURAL INFRASTRUCTURE –
DEVELOPMENT LTD., DAVANAGERE,
DAVANAGERE DISTRICT.

... PETITIONER

(BY SRI VIJAYA KUMAR, ADVOCATE (VIDEO CONFERENCING))

AND

1. STATE OF KARNATAKA
REP. BY ITS PRINCIPAL SECRETARY,
RURAL DEVELOPMENT AND
PANCHAYATHRAJ DEPARTMENT,
VIKASA SOUDHA,
BENGALURU – 560 001.
2. THE MANAGING DIRECTOR
KARNATAKA RURAL INFRASTRUCTURE –
DEVELOPMENT LTD.,
GRAMEENA ABHIVRUDDI BHAVAN,
ANAND RAO CIRCLE,
BENGALURU – 560 009.

3. THE KARNATAKA LOKAYUKTHA
REPRESENTED BY ITS REGISTRAR
M.S.BUILDING, AMBEDKAR VEEDHI
BENGALURU – 560 001.
4. THE ADDITIONAL REGISTRAR
OF ENQUIRIES – 7
KARNATAKA LOKAYUKTHA,
M.S.BUILDING,
DR. AMBEDKAR VEEDHI
BENGALURU – 560 001.

... RESPONDENTS

(BY SRI R.SRINIVASA GOWDA, AGA FOR R1 (PHYSICAL HEARING);
SRI H.DEVENDRAPPA, ADVOCATE FOR R2(VIDEO
CONFERENCING);
SRI VENKATESH ARABATTI, ADVOCATE FOR R3 AND
R4 (VIDEO CONFERENCING))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR
RECORDS RELATING TO ISSUE OF THE ENTRUSTMENT OF INQUIRY
DATED 11.01.2018 VIDE ANNEX-F AND THE CHARGE MEMO DATED
24.3.2018 ISSUED BY R-4 VIDE ANNEX-G AND AFTER PERUSAL
SET ASIDE THE SAME.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED
FOR ORDERS ON 13.10.2020, COMING ON FOR PRONOUNCEMENT
THIS DAY, THE COURT MADE THE FOLLOWING :-

ORDER

Petitioner in this petition has called in question the order
dated 11.01.2018 by which departmental enquiry is entrusted

to the hands of the third respondent - Lokayukta and the consequent charge sheet issued by the fourth respondent- Enquiry Officer.

2. Filtering out unnecessary details, the facts germane are as follows:

Petitioner was appointed as an Assistant Engineer in May 1996 in the Karnataka Rural Infrastructure Development Limited. When the petitioner was functioning at Davangere in the cadre of Assistant Engineer, a complaint was registered before the third respondent by one Manikantan.K alleging that the petitioner had amassed wealth disproportionate to his known sources of income. The third respondent in pursuance of the complaint entrusted investigation to the Lokayukta police, Davangere who after investigation submitted a report on 20.01.2017 that the complaint was without any substance and the petitioner had not amassed wealth disproportionate to his income.

3. Later, a report under Section 12(3) of the Karnataka Lokayukta Act, 1984 (hereinafter referred to as the 'said Act' for short) was submitted by the third respondent to the Government-first respondent seeking entrustment of the enquiry to its hands under Rule 14-A of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 (hereinafter referred to as KCS(CCA) Rules for short). On receipt of the report from the hands of the third respondent, the Government under 12(4) of the said Act entrusted the enquiry to the hands of the Lokayukta in terms of Rule 14-A of the KCS(CCA) Rules by its order dated 11.01.2018, pursuant to which, the third respondent appointed the fourth respondent as Enquiry Officer who issued charge sheet against the petitioner on 24.03.2018. It is the aforesaid order of entrustment dated 11.01.2018 and the charge memo dated 24.03.2018 that are called in question in this writ petition.

4. Heard Sri.Vijaya Kumar, learned counsel appearing for petitioner, Sri.R.Srinivasa Gowda, learned Additional Government Advocate for respondent No.1, Sri.H.Devendrappa, learned counsel for respondent No.2 and Sri.Venkatesh Arabatti, learned counsel for respondent Nos.3 and 4.

5. The learned counsel appearing for the petitioner would contend the assets and liabilities statement has been submitted by the petitioner in terms of the Conduct Rules. The enquiry now sought to be held is for purchase of a house site on 26.08.1996 which forms part of the assets and liabilities statement for the years 1996-97 and the construction of a house which the complaint alleges was also of the year 2003-04 which formed a part of the assets and liabilities statement of the year 2004. The learned counsel would contend that the investigation taken up by the Lokayukta is contrary to Section 8(2)(c) and (d) of the said

Act and the order of entrustment is contrary to Section 12(4) of the said Act. He would place reliance upon the judgment of a Division Bench of this Court in the case of ***Karnataka Lokayuktha v. H.N.Niranjan & another*** reported in ***2017(6) KLJ 80***.

6. On the other hand, the learned counsel appearing for the State and Lokayukta would in unison contend that the writ petition is premature as what is challenged is an order of entrustment and issuance of charge sheet pursuant to such entrustment, which has not culminated in any order adverse to the petitioner for him to knock the doors of this Court at this stage.

7. The learned counsel appearing for the third respondent-Lokayukta would contend that a subsequent judgment of the Division Bench in the case of ***Sri Gopal Hanumanth Kase v. The State of Karnataka*** reported in

ILR 2018 KAR 2347 would be applicable to the facts of the case and the writ petition is to be dismissed as being premature.

8. I have given my anxious consideration to the submission made by the learned counsel for the parties and perused the material on record.

9. The only issue that falls for my consideration at this stage would be whether the order of the Government entrusting the enquiry to the hands of the Lokayukta in terms of Rule 14-A of the KCS(CCA) Rules is in consonance with Section 12(4) of the said Act.

10. The complaint against the petitioner was that he has amassed wealth disproportionate to the known sources of income. The complaint was specific with regard to this allegation, which reads as follows:

“ಇವರು ಸರ್ಕಾರಿ ನೌಕರಿಯಲ್ಲಿ ಸೇವೆ ಸಲ್ಲಿಸುತ್ತಿದ್ದು ಸದರಿಯವರು ತನ್ನ ಹೆಸರಿಗೆ ಮತ್ತು ಪತ್ನಿಯ ಹೆಸರಿಗೆ ಹಾಗೂ ಪತ್ನಿಯ ಸಂಬಂಧಿಕರ ಹೆಸರಿಗೆ ಇವರ ಸಂಬಂಧಿಕರ ಹೆಸರಿಗೆ ಹಾಗೂ ಬೇನಾಮಿ ವ್ಯಕ್ತಿಗಳ ಹೆಸರಿಗೆ ದಾವಣಗೆರೆಯಲ್ಲಿ ಅಕ್ರಮ ಆಸ್ತಿ ಮತ್ತು ಐಸಾರಾಮಿ ವಸತಿ ನಿವೇಶನಗಳನ್ನು ಹೊಂದಿದ್ದು, ಸರ್ಕಾರದ ಅನುದಾನವನ್ನು ತಮ್ಮ ಸೇವೆಯನ್ನು ದುರುಪಯೋಗಪಡಿಸಿಕೊಂಡು ಅಕ್ರಮ ಆಸ್ತಿ ಹೊಂದಿದ್ದಾರೆ.”

“ಇವರ ಬಳಿ ಆಸ್ತಿ ಮತ್ತು ಋಣಭಾರ ಪ್ರಮಾಣ ಪತ್ರಗಳು ಹಾಗೂ ಸರ್ಕಾರಿ ನೌಕರ ಸೇವಾವಹಿ ಲಭ್ಯವಿರುತ್ತದೆ.”

In terms of the complaint what was alleged was, the petitioner has made properties in the names of others (benami) and has built palatial houses. It was also alleged that these facts were available in the assets and liabilities statement. On receipt of the complaint, the Lokayukta directed its Police Wing to conduct investigation. The outcome of investigation was that the Police found no substance in the complaint. The opinion of the Investigating Officer reads as follows:

“07	ಅಭಿಪ್ರಾಯ.	ಅರ್ಜಿದಾರರು ತಮ್ಮ ದೂರಿನಲ್ಲಿ ನೀಡಿದ ಅಂಶಗಳು ವಾಸ್ತವಾಂಶದಿಂದ ಕೂಡಿರುವುದಿಲ್ಲ ಹಾಗೂ ಅಕ್ರಮ ಆಸ್ತಿಯನ್ನು ಹೊಂದಿರುವುದು ಕಂಡುಬಂದಿರುವುದಿಲ್ಲ ಹಾಗೂ ಸದರಿಯವರ ಕುರಿತು ನಿಗಾವಹಿಸಿರುತ್ತದೆ. ಸದರಿ ಅರ್ಜಿಯ ಸಂಬಂಧ ಇದ್ದ ಸಂಗತಿಯನ್ನು ಮುಂದಿನ ಕ್ರಮಕ್ಕಾಗಿ ಮಾನ್ಯರಲ್ಲಿಗೆ ನಿವೇದಿಸಿಕೊಂಡಿರುತ್ತದೆ.”
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11. After the report submitted by the Police of the Lokayukta on 20.01.2017, a notice was issued to the petitioner on 04.10.2017 alleging that the residential house in Davangere, 6 acres of land and some other properties were purchased without prior permission of the Government and if the records of prior permission is available, the same be furnished to the Lokayukta. The substance of the notice reads as follows:

“ಉಲ್ಲೇಖಿತ ವರದಿಯನ್ವಯ *ದಾವಣಗೆರೆ ಸಿದ್ದವೀರಪ್ಪ ಬಡಾವಣೆಯಲ್ಲಿ ಮನೆ ನಂ.147/1 ರಲ್ಲಿ ಎದುರುದಾರರ ಹೆಸರಿನಲ್ಲಿ ಒಂದು ಮನೆ, * ಜಗಳೂರು ತಾಲ್ಲೂಕು, ಕೆಚ್ಚೇನಹಳ್ಳಿಯಲ್ಲಿ ಎದುರುದಾರರಿಗೆ ಪಿತ್ರಾರ್ಜಿತವಾಗಿ ಬಂದ ಸ.ನಂ.11ರಲ್ಲಿ 6 ಎಕರೆ ಮಿಷ್ಣಿ ಜಮೀನು, *ಸ.ನಂ.1ರಲ್ಲಿ 10 ಎಕರೆ 15 ಗುಂಟೆ ಮಿಷ್ಣಿ ಜಮೀನು, * ಎದುರುದಾರರ ಹೆಂಡತಿಯ ಹೆಸರಿನಲ್ಲಿ ಶಾಮನೂರಿನಲ್ಲಿ ಸೈಟ್ ನಂ.25 ಮತ್ತು 26 ಇರುತ್ತದೆ ಎಂದು ವರದಿ ನೀಡಿರುವುದು ಕಂಡು ಬರುತ್ತದೆ.”

12. In reply to the notice, the petitioner substantiated that the ownership of the land had come pursuant to partition of the wife's property which was brought to the notice of the Government in the assets and liabilities statement of the years 1996-97. The construction of the house was also brought to the notice of the Government in the assets and liabilities statement of the years 2003-04. It was also clarified that site Nos.25 and 26 of Shamanur village, Davangere was gifted by his wife's brother to his wife by way of a registered gift deed on 11.02.1994 which was also brought to the notice of the Government. Petitioner enclosed all the documents to his reply to the notice of the Lokayukta.

13. Notwithstanding the clarification in the documents given, the Lokayukta on 30.11.2017 furnished its report under Section 12(3) of the said Act which repeats the contents of the notice. Paragraphs 5 and 7 of the report reads as follows:

“5. ಎದುರುದಾರರು ವಿವರಣೆಯನ್ನು ಸಲ್ಲಿಸಿದ್ದು, ವಿವರಣೆಯಲ್ಲಿ ಡೋರ್ ನಂ.1471/10 ಸ್ವತ್ತಿಗೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಖಾಲಿ ನಿವೇಶನವನ್ನು ದಿ.26/8/1996 ರಂದು ಖರೀದಿಸಿದ್ದು, ಅವರ ಸಂಬಳ ಉಳಿತಾಯ, ಕೃಷಿ ಆದಾಯ ಮತ್ತು ಬ್ಯಾಂಕ್ ಸಾಲಗಳ ಮೂಲಕ ಮನೆಯನ್ನು ನಿರ್ಮಿಸಲಾಗಿದೆ. ಜಗಳೂರು ತಾಲ್ಲೂಕು, ಕೆಚ್ಚೇನಹಳ್ಳಿ ಸ.ನಂ.11 ರಲ್ಲಿ 6 ಎಕರೆ ಜಮೀನು ಮತ್ತು ಸ.ನಂ.1 ರಲ್ಲಿ 10 ಎಕರೆ 15 ಗುಂಟೆ ಜಮೀನು ಪಿತ್ರಾರ್ಜಿತ ಸ್ವತ್ತಾಗಿದ್ದು, ದಿ.30/9/90 ರಂದು ಆಗಿರುವ ಪಾಲು ವಿಭಾಗದ ಮೂಲಕ ಬಂದಿರುತ್ತದೆ. ಶಾಮನೂರು ಗ್ರಾಮದಲ್ಲಿ ಸೈಟ್ ನಂ.25 ಮತ್ತು ಸೈಟ್ ನಂ.26ನ್ನು ಎದುರುದಾರರ ಪತ್ನಿಯ ಅಣ್ಣ ದಿ.11/2/94 ರಲ್ಲಿ ದಾನಪತ್ರದ ಮೂಲಕ ಎದುರುದಾರರ ಹೆಂಡತಿಗೆ ನೀಡಿರುತ್ತಾರೆಂದು ವಿವರಣೆಯಲ್ಲಿ ತಿಳಿಸಿರುತ್ತಾರೆ.”

“ 7. ದಾವಣಗೆರೆಯ ಸಿದ್ಧವೀರಪ್ಪ ಬಡಾವಣೆಯಲ್ಲಿರುವ ಸ್ವತ್ತು ಹಾಗೂ ಮನೆಯ ವಿಚಾರವಾಗಿ ಎದುರುದಾರರು ದಿ.26/8/1996 ರ ನೋಂದಾಯಿತ ಕ್ರಯಪತ್ರದ ಪ್ರತಿಯನ್ನು ಹಾಜರು ಪಡಿಸಿರುತ್ತಾರೆ. ಸದರಿ ಸ್ವತ್ತನ್ನು ಖರೀದಿಸಲು ಮತ್ತು ಮನೆಯನ್ನು ಕಟ್ಟಲು ಸಂಬಳದ ಉಳಿತಾಯ, ಕೃಷಿ ಆದಾಯ ಮತ್ತು ಬ್ಯಾಂಕ್ ಸಾಲಗಳನ್ನು ಪಡೆದಿರುವ ಬಗ್ಗೆ ತಿಳಿಸಿದ್ದು, ಆದರೆ ಆ ಬಗ್ಗೆ ಯಾವುದೇ ದಾಖಲಾತಿಗಳನ್ನು ಹಾಜರು ಪಡಿಸಿರುವುದಿಲ್ಲ. ಸ್ವತ್ತನ್ನು ಖರೀದಿಸುವ ಮೊದಲು ಮತ್ತು ಮನೆಯನ್ನು ಕಟ್ಟುವ ಮೊದಲು ಆದಾಯದ ಮೂಲವನ್ನು ತೋರಿಸಿರುವುದಿಲ್ಲ ಮತ್ತು ಇಲಾಖೆಯಿಂದ ಯಾವುದೇ ಅನುಮತಿಯನ್ನು ಪಡೆದಿರುವುದು ಹಾಗೂ ಸ್ವತ್ತು ಖರೀದಿಸಿದ ಬಗ್ಗೆ ಮತ್ತು ಮನೆಯನ್ನು ಕಟ್ಟುವ ಬಗ್ಗೆ ಹಾಗೂ ಆದಾಯದ ಮೂಲದ ಬಗ್ಗೆ ಇಲಾಖೆಗೆ ತಿಳಿಸಿರುವುದು ಕಂಡುಬರುತ್ತಿಲ್ಲ.”

And at paragraph 8 holds that the petitioner is partially guilty of the allegations leveled and sought enquiry to be entrusted to itself under 14-A of the KCS(CCA) Rules by passing an order under Section 12(4) of the said Act.

14. Section 12(4) of the said Act reads as follows:

"12(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."

In terms of the afore-extracted Section of the Act, the Competent Authority has to examine the report and then entrust the enquiry to the hands of the Lokayukta. The impugned order of entrustment dated 11.01.2018 bears no such consideration.

15. Application of mind on the part of the Competent Authority prior to entrustment is imperative in the cases of such nature as the allegations leveled in the complaint as also in the report pertain to 1996-97 and 2003-04, both of which formed a part of assets and liabilities statement given to the Government by the petitioner from time to time. It is only after examination of these statements and coming to conclude as to whether there is any substance in the report of the Lokayukta under Section 12(3), form its opinion under Section 12(4) of the said Act and then pass an order of entrustment.

16. The order of entrustment displays no application of mind on the part of the first respondent forming an opinion as to why an entrustment should be made to the hands of the Lokayukta for conduct of a departmental enquiry. The Division Bench of this Court in the case of ***The Karnataka Lokayuktha Vs. Sri H.N.Niranjan*** reported in ***2017(6) KLJ 80*** has held as follows:

"3. It appears that the Tribunal has exercised the power for alleged breach and non-compliance 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:

"7. 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 Upa Lokayukta 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 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 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 of 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 Upa Lokayukta. In para-3 of the Government Order, it is stated that as recommended by the Hon'ble Upa Lokayukta, it has been decided to hold disciplinary proceedings against the applicant and to entrust the same to Upa Lokayukta. 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 mandate 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 Upa Lokayukta, it has been decided to hold disciplinary proceedings and to entrust the same to Upa Lokayukta 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 this case for the first time only in the report submitted by the Technical Wing of Karnataka Lokayukta. It is submitted on behalf of the applicant that the Assistant Executive Engineer concerned was the Implementation Officer as regards the concerned work and that the applicant

cannot be held liable for any irregularity in the matter. The contentions of the applicant in this regard and 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, it is stated that the report under Section 12(3) of the Lokayukta Act has been examined by the first respondent before passing the order dated 12.11.2013 directing initiation of departmental enquiry against the applicant. The Competent Authority has blindly accepted the recommendation made in the report sent under Section 12(3) of the Lokayuktha Act and directed initiation of enquiry against the applicant. Having

regard to the same, the order of initiation of departmental enquiry against the applicant and entrustment of the enquiry to the Hon'ble Upa Lokayukta as per order dated 12.11.2013 will have to be quashed. Consequently, all further proceedings pursuant to the said order, particularly issuance of the 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."

4. *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 Lokayuktha and therefore it may be considered as deemed consideration by the State*

Government and resultantly compliance to Section 12(4) of the Act.

5. 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 opinion of Lokayuka, for initiation of the enquiry. When there is no examination of the case by the Government under Section 12(4) of the Act, it cannot be said the Tribunal has committed any error which may call for any interference by this court."

In the judgment of **H.N.Niranjan** *supra*, the Division Bench of this Court affirmed the view taken by the Tribunal that it was imperative on the part of the Competent Authority to examine and form an opinion with regard to entrustment.

17. The learned counsel for the Lokayukta who places reliance upon the subsequent judgment of the Division Bench

in the case of ***Sri Gopal Hanumanth Kase*** *supra* would be inapplicable to the facts of the case as examination in terms of 12(4) of the said Act was absolutely necessary in the case at hand, as the allegations in the complaint pertain to the incidents that happened 22 and 14 years ago respectively. Therefore, the first respondent-Government is required to reconsider the report submitted by the Lokayukta and in terms of law arrive at a conclusion with regard to entrustment under Rule 14-A of the KCS(CCA) Rules. For the aforesaid reasons, the following:

ORDER

- (i) Writ petition is allowed.
- (ii) The order of entrustment of inquiry by the first respondent bearing No.Gra.Aa.Pa.04.Ka.Gra.Mu. 2018 dated 11.01.2018 is quashed.
- (iii) Sequentially, the action of the fourth respondent

dated 24.3.2018 drawing up the charge sheet No.Uplok-2/DE/67/2018/Aa.Ni.Vi-7 against the petitioner is also quashed.

- (iv) The first respondent-Government is directed to consider the matter afresh in consonance with Section 12(4) of the said Act and then order entrustment of enquiry to the hands of the Lokayukta under 14-A of the KCA(CCA) Rules in accordance with law.

**Sd/-
JUDGE**

bkp
CT: MJ