

**KARNATAKA LOKAYUKTA**

Compt/LOK/GLB/1106/2020/ARLO-3

M.S. Building,  
Dr. B.R. Ambedkar Veedhi,  
Bengaluru, dated: 27/11/2020.

**REPORT UNDER SECTION 12(3) OF  
KARNATAKA LOKAYUKTA ACT, 1984**

**Sub:** Proceedings initiated against Sri Shama, S/o Shanthappa Savalagi, then working as Deputy Commissioner of Excise, Bidar District about his misconduct as Government servant - reg.,

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A suo-motu investigation was taken up under Section 7 read with section 9 of The Karnataka Lokayukta Act, 1984, against **Sri Shama, S/o Shanthappa Savalagi**, then working as Deputy Commissioner of Excise, Bidar District (herein after referred to as '**Respondent**') on the basis of the material/copy of Charge sheet placed by the Dy.S.P, Karnataka Lokayukta, Bidar in Cr. No. 5/2013 of Bidar Lokayukta Police Station which was submitted to this office through his letter dated 12/06/2020.

2. Crime Number 5/2013 of Bidar Lokayukta Police Station was registered against respondent on the basis of information that he had amassed wealth disproportionate to his known sources of income. The Dy.S.P, Karnataka Lokayukta, Bidar, after investigation had filed a charge sheet before the Special Judge Court, Bidar.



3. The respondent had joined Government service as FDA in the Department of Excise, on 19/11/1983. On registration of the above case against the respondent, the Investigation Officer has taken 19/11/1983 to 26/09/2013 as check period for calculation of assets acquired, expenses incurred and income derived by the respondent.
4. The details of assets acquired by the respondent during the period from 19/11/1983 to 26/09/2013, are as follows:-
5. On 27/05/1999 the respondent's wife Smt. Gajalakshmi had purchased agricultural land in her name bearing Sy. No. 19 measuring 3 acre 15 gunta and survey no. 20 measuring 35 gunta situated at Tegampura village, Balki Taluk, Bidar District for a sum of Rs. 60,000/- which was registered vide Document No.1102/1999-2000.
6. On 27/05/1999 the respondent's wife Smt. Gajalakshmi had purchased agricultural land in her name bearing Sy. No. 20 measuring 4 acre 10 gunta situated at Tegampura village, Balki Taluk, Bidar District for a sum of Rs. 60,000/- which was registered vide Document No.1103/1999-2000.
7. On 17/07/2008 the respondent had purchased agricultural land in the respondent's name bearing Sy. No. 23/A measuring 4 acre 12 gunta situated at Ganeshpur village, Medaka District, Andrapradesh State



for a sum of Rs. 1,07,500/- which was registered vide Document No.4003/2008-2009.

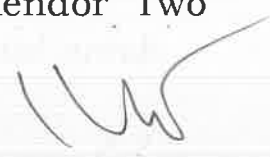
8. On 17/07/2008 the respondent's wife Smt. Gajalakshmi had purchased agricultural land in her name bearing Sy. No. 23/A measuring 4 acre 4 gunta situated at Ganeshpur village, Medaka District, Andrapradesh State for a sum of Rs. 1,02,500/- which was registered vide Document No.4002/2008-2009.
9. On 04/08/2011 the respondent's son Sri. Sankalp had purchased a site in his name bearing No. 35 in Sy. No. 47 situated at Badeput Area, Kalburgi for a sum of Rs. 5,40,000/-.
10. On 26/04/1991 the respondent's wife Smt. Gajalakshmi had purchased a site in her name bearing No. 21 situated at Jangalkoyee area, Bidar City for a sum of Rs. 15,000/- which was registered vide Document No.1389/1991-92.
11. On 22/06/1999 the respondent's wife Smt. Gajalakshmi had purchased a site in her name bearing No. 24 situated at Jangalkoyee area, Bidar City for a sum of Rs. 54,000/- which was registered vide Document No.1063/1999-2000.
12. On 30/11/2001 the respondent had purchased a site in the respondent's name bearing No. 8-9-13(old), 8-9-21/1(new) situated near district prison Bidar City for a sum of Rs. 1,56,500/-.



13. On 22/08/2000 the respondent had purchased a site in the respondent's name bearing No. 9-7-199 situated at Vidyanagar area, Bidar City for a sum of Rs. 1,18,000/- which was registered vide Document No.2484/2000-01.
14. On 29/08/2003 the respondent's daughter Smt. Sunija had purchased a site in her name bearing No. 14(CMC no.8-6-68/15/14) situated Gullarhaveli area, Bidar City for a sum of Rs. 2,20,000/- which was registered vide Document No.2972/2003-04.
15. On 27/06/1989 the respondent's mother Smt. Sharanamma had purchased a site in her name bearing No. 1 in Sy. No. 22 situated at Brahma pura area, Gulbarga measuring 1,200 sq. feet for a sum of Rs. 18,000/- which was registered vide Document No.1200/1989-1990.
16. On 30/03/1998 the respondent had purchased two sites in the respondent's name bearing No. 8-11-39/23/A and 8-11-39/23/E situated near SBH colony, Bidar City for a sum of Rs. 1,05,000/- which was registered vide Document No.4728/1997-98.
17. On 11/09/2009 the respondent's mother Smt. Sharanamma had purchased a site in her name bearing No. 440 in Sy. No. 21/1 situated at Hirapura area, Gulbarga measuring 6\*9 mt. for a sum of Rs. 42,950/- which was registered vide Document No.5596/2009-10.



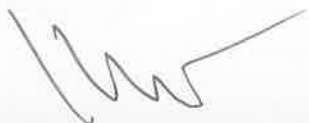
18. On 20/00/1989 the respondent had purchased a site in the respondent's name bearing No. 87 in Sy. No. 42/1,2,3 situated at Goranahalli village, Bidar Taluk for a sum of Rs. 7,000/- which was registered vide Document No.3435/1988-1989.
19. On 03/05/2010 the respondent's father Sri. P. Manik Rao had purchased a site in his name bearing No. 118 in Sy. No. 58 situated at Shivanagar, Aliyabadh, Bidar for a sum of Rs. 11,00,000/- which was registered vide Document No.542/2010-11.
20. On 13/11/2006 the respondent had sold a site bearing no. 87 in sy. No. 42/1,2,3 standing in the respondent's name situated at Goranahalli village, Bidar Taluk for a sum of Rs. 48,500/- which was registered vide document no. 4318/2006-07
21. In relation to the above purchase and sale of immovable properties as stated in paragraphs 6 to 21 of the observation note, the respondent had not obtained prior permission from the prescribed authority and also not intimated the acquisition/sale of properties, as mandated under Rule 23(2) of the Karnataka Civil Services (Conduct) Rules, 1966. The respondent has also not intimated the sources of income for purchase of the immovable properties during the relevant years.
22. The respondent's son Sri. Sankalp Savalagi had purchased an unregistered Hero Honda Splendor Two



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Wheeler vehicle from M/s Vijay Motors, Vijayapura for Rs. 45,219/-.

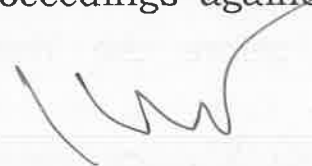
23. In relation to purchase of above vehicle stated in paragraphs 23 of the observation note the respondent had not obtained previous sanction from the prescribed authority and also not intimated the purchase of above vehicles as required under Rule 23(3) of the Karnataka Civil Services (Conduct) Rules, 1966. The respondent had also not intimated the sources of income for purchase of above vehicles.
24. While conducting raid at the residents of the respondent on 26/09/2013, the I.O. has seized a document written on E-stamp paper which indicates that the respondent had lent an amount of Rs. 1,00,000/- to Smt. Shobha Kokare for meeting the education expense of her son Sri. Harish Kokare. However it appears that the permission of the prescribed authority in lending such money has not been taken.
25. During the course of raid carried at the respondent's residence the I. O. has found that the respondent were in possession of gold weighing 151.7 grams and the respondent were also in possession of silver articles weighing 371.59 grams both valuing at Rs. 3,20,000/- However, its acquisition and source are to be furnished by the respondent.
26. The respondent's wife Smt. Gajalakshmi is a partner doing business in M/s Annapurneshwari Agencies, Bidar.



However the respondent have not obtained sanction of the prescribed authority in indulging the respondent's wife in such business activity and that the respondent have not reported the factum of such business and income derived by the respondent's wife in the respondent's annual statement of assets and liabilities.

27. In view of the above, the respondent being a Government servant have committed misconduct under Rule 3(1)(i) to (iii) of Karnataka Civil Services (Conduct) Rules, 1966 by not maintaining absolute integrity, devotion to duty and acted in a manner unbecoming of Government Servant and violated Rules 21(4), 23(2) and 23(3) of the Karnataka Civil Services (Conduct) Rules, 1966.

28. In view of the above, the respondent being a Government servant was prima facie found to have committed misconduct under Rule 3(1)(i) to (iii) of Karnataka Civil Services (Conduct) Rules, 1966 by not maintaining absolute integrity, devotion to duty and acted in a manner unbecoming of Government Servant and violated Rules 21(4), 23(2) and 23(3) of the Karnataka Civil Services (Conduct) Rules, 1966. Therefore, the respondent was issued notice along with observation notes with a direction to show cause as to why recommendation shall not be made to the Competent Authority for initiating disciplinary proceedings against him in accordance with law. . . . .



29. The observation note prepared on the basis of charge sheet and documents in Cr.No. 5/2013 of Karnataka Lokayukta Police Station, Bidar was served on the respondent. Accordingly the respondent has submitted his comments dated 05/10/2020 contending that he has not violated any of the mandatory provisions of Rule 21 and 23 of KCS (Conduct) Rules, 1966.

30. The respondent has contended that he has reported purchase of immovable properties mentioned in the observation note and that he had reported its acquisition in the annual statement of assets and liabilities.

31. It is his defence that through Government Order dtd.14/03/2016 the Government of Karnataka has constituted Anti Corruption Bureau (A.C.B. for short) as such this institution has no jurisdiction to investigate into the aspects mentioned in the observation note. It is his further defence that as per Rule 214(2)(b) of KCSR any enquiry against a retired employee shall be initiated within 4 years. Since the respondent has retired on 31/05/2017 and the check period for investigation is from 19/11/1983 till 26/09/2013, no enquiry is permissible in law. He has contended that due to passage of several years after his retirement, the respondent has not retained records relating to his assets and liabilities as such he is unable to submit detailed comments. Further referring to the pending special case against him before the Hon'ble Special Court for prosecution of





offence under PC Act, the respondent has requested for dropping the proceedings till adjudication of the said case. So far as properties standing in the name of his family members are concerned, the respondent has contended that those properties were purchased by the family members out of their independent income. Therefore, he has prayed for closure of this case.

32. The records furnished by the respondent as well as the materials placed on record along with the charge sheet are perused in detail.

33. It is significant to note that, the matter under investigation in the present complaint pertains to the compliance of mandatory provisions of KCS (Conduct) Rules-1966 as such the only aspect under consideration in this case is as to whether the respondent has acquired or disposed properties (both movable and immovable) in accordance with Rule 21 and 23 of the rules mentioned above.

34. With respect to the defence raised by the respondent it is relevant to note that A.C.B. was constituted to investigate offence committed under the provisions of Prevention of Corruption Act, 1988. However this institution continues to have jurisdiction with respect to the investigation concerning "misconduct" on the part of public servant as per the provisions of KCS (Conduct) Rules. As per Sec.7 of Karnataka Lokayukta Act Hon'ble Lokayukta or Hon'ble Upalokayukta may investigate a complaint



involving a "grievance" or an "allegation". The word "allegation" is define in Sec.2(2) of KL, Act whereas Sec.2(8) defines the word "grievance". An affirmation that a public servant is guilty of corruption is termed as an "allegation". As admitted by the respondent he is facing prosecution on the allegation of amassing wealth which is disproportionate to his known sources of income. Therefore, the material on record prima facie indicates the involvement of respondent in the alleged act of corruption. Since the provisions of Karnataka Lokayukta Act are not amended though A.C.B. is constituted, this institution continues to have jurisdiction to investigate the allegations ascertained on the basis of charge sheet filed in the criminal case. Therefore, the said defence of the respondent has no substance in it. Moreover the criminal case has not been disposed finally by acquitting the respondent.

35. As mentioned above it is the defence of respondent that he has retired on 31/05/2017 and the check period involved in this case is up to 26/09/2013, which is beyond 4 years, as such the initiation of enquiry as per Rule 214(2)(b) of KCSR is impermissible. It is relevant to note that Rule 214 comes into operation after retirement of a government servant. In this case the respondent has retired on 31/05/2017. Therefore, initiation of enquiry before completion of 4 years from the date of retirement is permissible. As such this investigation cannot be contended to be impermissible.



36. So far as the contention that the respondent has not preserved records relating to his assets and liabilities due to his retirement, it is needless to point out that, the respondent is facing prosecution in the criminal case before the Hon'ble Special Court. Therefore, at no stretch of imagination it can be assumed that the respondent has no records with him which relates to the allegations which are subject matter of trial. The request of the respondent to defer investigation of this case till final adjudication of criminal case has no legal basis because the departmental enquiry and criminal case are initiated, prosecuted and concluded independently. The decision reported in **A.I.R. 1960 S.C 806** between **Delhi Cloth and General Mills Limited V/s Kushal Bhan**, relied by the respondent goes against his own contention as the Hon'ble Supreme Court has held that *often employers stay enquires pending decision of the Criminal Courts and that is fair. But it could not be said that Principles of Natural Justice require that an employer must wait for the decision atleast of the trial court before taking action against the employee.* Therefore, there is no absolute bar in initiating disciplinary proceedings during pendency of criminal case.

37. In the light of statutory provision, on examination of material placed on record, it is noticed that, the respondent has failed to submit acceptable defence by prima facie establishing compliance with Rule 21 and 23. In the absence of acceptable defence as mentioned above,



the only conclusion that can be reached is that the respondent has failed to obtain prior permission for acquisition of immovable properties as enumerated in the observation note and that he has also failed to report acquisition of movable properties to the prescribed authority as per law.

38. It is significant to note that, the matter under investigation in the present complaint pertains to the compliance of mandatory provisions of KCS (Conduct) Rules-1966 as such the only aspect under consideration in this case is as to whether the respondent has acquired or disposed properties (both movable and immovable) in accordance with Rule 21 and 23 of the rules mentioned above.
39. It is relevant to point out that, as per the proviso appended to Rule 23(2) & (3) of KCS (Conduct) Rules 1966, the respondent is cast with a burden to establish that his family members had their own funds which are distinct from the funds of his income so as to claim exemption from securing previous sanction from or previous intimation to the prescribed authority under the said rule. The respondent has not offered any explanation in substantiating existence of distinct funds with his family members in whose names the properties in question were acquired.
40. Therefore defence, if any, of the respondent is to be appreciated by conducting a detailed enquiry. As such

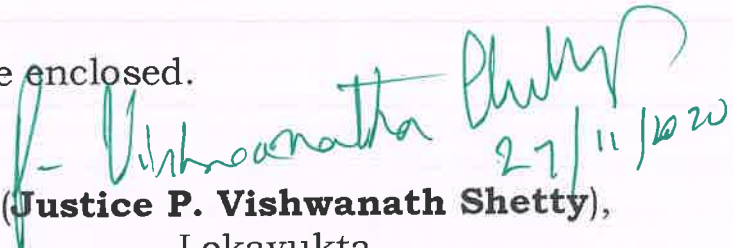


there exists prima-facie case to attribute misconduct on the part of respondent as defined in Rule 3 (1)(i) to (iii) of KCS (Conduct) Rules-1966. Therefore, a recommendation under section 12(3) of Karnataka Lokayukta Act-1984 is required to be made to the Competent Authority for initiating enquiry against the respondent and entrusting it to this authority.

41. The facts and materials on record prima-facie show that, the respondent has committed misconduct as per Rule 3 (1) (i) to (iii) of KCS (Conduct) Rules, 1966. Accordingly, now, acting under Section 12(3) of The Karnataka Lokayukta Act, 1984, recommendation is made to the Competent Authority to initiate disciplinary proceedings against **Sri Shama, S/o Shanthappa Savalagi**, then working as Deputy Commissioner of Excise, Bidar District (Date of Retirement: 31/05/2017) and to entrust the inquiry to this Authority under Rule 214(2) of the Karnataka Civil Services Rules.

42. Further, as per Section 12(4) of Karnataka Lokayukta Act, 1984, the Competent Authority shall intimate to this Authority within one month from the date of receipt of this report, as to the action taken or proposed to be taken on the basis of this report.

Connected records are enclosed.

  
(Justice P. Vishwanath Shetty),  
Lokayukta,  
State of Karnataka.

