

**KARNATAKA LOKAYUKTA**No:Compt/Uplok/BCD-115/2017/ARLO-1.Date:20-04-2022  
21**REPORT UNDER SECTION 12(3) OF KARNATAKA LOKAYUTKA  
ACT, 1984.**

Sub:- Initiation of proceedings against the respondent No:1 Sri. Prakash, Executive Engineer, Vijayanagara Division, BBMP., Bengaluru, (2) Sri. Nagesh, Assistant Executive Engineer, Vijayanagara Sub-Division, BBMP., Bengaluru and (3) Sri. Hemanth Kumar, Assistant Engineer, Ward No:124, Hosahalli, BBMP., Bengaluru and (4) Smt. Amruthsai, Assistant Engineer, Vijayanagara Sub-Division, BBMP., Bengaluru about their misconduct as public/Government servants-reg.

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An investigation was taken up under section 9 of the Karnataka Lokayukta Act, 1984, on the basis of complaint filed by Sri.Pragathi K. Venkatesh Babu, No:147, 2<sup>nd</sup> Main, 3<sup>rd</sup> cross, Chamrajpet, Bengaluru (hereinafter referred to as 'complainant' for short) against (1) Sri. Prakash, Executive Engineer, Vijayanagara Division, BBMP., Bengaluru, (2) Sri. Nagesh, Assistant Executive Engineer, Vijayanagara Sub-Division, BBMP., Bengaluru, (3) Sri. Hemanth Kumar, Assistant Engineer, Ward No:124, Hosahalli, BBMP., Bengaluru and (4) Smt. Amruthsai, Assistant Engineer, Vijayanagara Sub-Division, BBMP., Bengaluru (hereinafter referred to as 'Respondent No:1 to 4' for short).

2. The substance of the complaint is that, a building is constructed at property No:76, 15<sup>th</sup> main road, Vijayanagara Bengaluru Ward No:124 (Hosahalli) with all violations of sanctioned

plan and without leaving setback around the building and illegal cellar and extra floor has also been constructed.

3. It is also alleged that both the Executive Engineer Sri. Prakash, Vijayanagara Division, BBMP., and Assistant Executive Engineer of Vijayanagara Sub-Division, BBMP., Sri. Nagesh have taken huge bribe from the deviating building owner for not initiating action for the violation in construction as per the KMC Act, 1976.

4. Along with his complaint, the complainant has furnished the copy of the representation made to the Executive Engineer/ respondent No:1, copy of representation made to the Assistant Executive Engineer/respondent No:2 dated:14-11-2016 and xerox copy of the photograph.

5. The note-sheet reveals that at the first instance complaint has been filed against the respondent No: 1 to 3 respectively i.e., Executive Engineer, Vijayanagara Division Sri.Prakash (respondent No:1), Assistant Executive Engineer, Vijayanagar Sub-Division Sri. Nagesh (respondent No: 2) and Assistant Engineer, Ward No: 124 (Hosahalli) BBMP., Sri. Hemanth Kumar(Respondent No:3). Later the subsequent Assistant Engineers and Assistant Executive Engineer have been impleaded as respondent No: 4 to 6.

6. Respondent No:1/Executive Engineer Sri.S.K.Prakash and respondent No:2 Assistant Executive Engineer Sri. S.K.Nagesh filed their similar comments dated:18-04-2017 separately stating that the Assistant Executive Engineer has taken action for stopping the illegal construction; issued notice U/sec.308 of KMC Act on 17-01-2017; issued notice U/sec.321(1) of KMC Act on 14-03-2017, notice U/sec.321(2) of KMC Act on 31-03-2017 and issued order U/sec.321(3) of KMC Act on 07-04-2017. Along with their

comments respondent No 1 & 2 filed orders of Assistant Executive Engineer and Assistant Engineer jointly passed U/sec.321(1), 321(2) and sec.321(3) of KMC Act.

7. The respondent No: 3, Assistant Engineer, Ward No:124 (Hosahalli) BBMP., Bengaluru Sri. Hemanth Kumar has filed his comments dated:18-04-2017 stating that he received charge from Assistant Engineer Smt.Amruthasai on 24-10-2016. As per the order of Commissioner dated:25-11-2016 he was relieved from the Vijayanagara Sub-Division BBMP on 05-12-2016. The respondent No:3 also stated that while relieving from the charge of Assistant Engineer, Vijayangara he has handed over the charge to Smt. Amruthsai, Assistant Engineer (respondent No:4).

8. It is also stated that as he has worked for only one month 11 days he has no role in the instant case. Smt.Amruthasai has been taking action in the instant case.

9. The respondent No:4/subsequent Assistant Engineer Smt. Amruthsai has filed report dated:17-05-2017 stating that the Assistant Executive Engineer, Vijayanagara Sub-Division, BBMP., has taken action U/sec.308, 321(1), (2) and 321(3) of KMC Act and order U/sec.462 of KMC Act has been also passed on 15-04-2017. Along with her report respondent No:4 filed order passed by Executive Engineer/respondent No:1, Vijayanagara Division, BBMP., dated:15-04-2017 U/sec.462 of KMC Act.

10. The respondent No: 4 also stated that she received charge from Sri. Hemanth Kumar, Assistant Engineer on 05-12-2016 and worked as Assistant Engineer of Ward No: 124 till 10-04-2017 and handed over the charge to Sri.Shivanna, Assistant Engineer/respondent No:5 on 10-04-2017.

11. Again respondent No: 1 & 5 filed their report dated:19-08-2017 stating that order has been passed U/sec.462 of KMC Act on 15-04-2017 to demolish the portion of the illegal construction which is constructed violating the approved building plan and the byelaws. An estimate has been sent to the higher authorities for approval and after receiving further orders action will be taken.

12. Along with the report dated:19-02-2019 the Assistant Executive Engineer, Vijayanagara Sub-Division, BBMP, Bengaluru has filed the copy of the note-sheet of the BBMP., along with estimate copy sent to the higher authorities.

13. The perusal of the order passed jointly by the Assistant Executive Engineer/ respondent No:2 and Assistant Engineer/respondent No:4 dated:14-3-2017 U/sec. 321(1) of KMC Act discloses that order has been passed after construction of illegal structure violating the approved plan and building byelaws.

14. A perusal of the order passed by the respondent No:2 and 4 dated:31-03-2017 U/sec. 321(2) of KMC Act also discloses that order U/sec.321(2) of KMC Act has been passed after completion of construction violating the building byelaws and the approved plan. The above order also discloses that there is construction violating the sanctioned plan and building byelaws to the extent of 100% in some portions of each floor.

15. The perusal of the order of the Executive Engineer/respondent No:1 passed on 15-04-2017 U/sec. 462 of KMC Act also discloses that the order has been passed after completion of the illegal construction.

16. It is pertinent to note that at the first instance the instant case was filed against respondent No:1 to 3 only ie., Executive Engineer, Assistant Executive Engineer and Assistant Engineer of the jurisdictional area who were working at the time of the illegal construction. The instant complaint is filed on 19-01-2017. It is not in dispute that the respondent No: 1 Sri. Prakash was working as Executive Engineer Vijayanagara Division BBMP., at the relevant point of time and respondent No:2 Sri. Nagesh was working as Assistant Executive Engineer, Vijayanagara Sub-division, BBMP., Bengaluru.

17. According to the respondent No:3/Assistant Engineer Sri. Hemanth Kumar he was working as Assistant Engineer of Ward No: 124 (Hosahalli) from 24-10-2016 to 05-12-2016 ; as he has worked for only one month 11 days he has no role in the instant case. This contention of the respondent No:3/Assistant Engineer Sri.Hemanth Kumar cannot absolve him from his responsibility, because it is not the contention of the respondent No:3/Assistant Engineer Sri.Hemantha Kumar that the illegal construction was not in progress and was already completed during his period. In this regard, the contents of the notice dated:17-01-2017 issued U/sec.308 of KMC Act by the Assistant Executive Engineer to the alleged building owner discloses that vide notice U/sec.308 of KMC Act the owner of the alleged illegal building was called upon to furnish the documents pertaining to the construction in progress. It shows that during the tenure of respondent No:3 ie., from 24-10-2016 to 05-12-2016 the illegal construction was in progress. Hence, respondent No:3/ Assistant Engineer Sri.Hemantha Kumar is also responsible for dereliction of his duty.

18. As far as the respondent No:4/Smt. Amruthsai is concerned she was working as Assistant Engineer of the said area from 05-12-2016 to 10-04-2017 after receiving charge from the respondent No:3/ Assistant Engineer Sri.Hemantha Kumar. It is also pertinent to note that the contention of the respondent No:3/Assistant Engineer Sri.Hemantha Kumar that he received charge from Assistant Engineer Smt.Amruthsai on 24-10-2016 is neither disputed nor denied by the respondent No:4/Assistant Engineer Smt.Amruthsai. Hence, it is clear that prior to 24-10-2016 also respondent No: 4/Assistant Engineer Smt. Amruthsai was working in the said area as Assistant Engineer. It is also pertinent to note that notice dated:17-1-2017 U/sec.308 of KMC Act was issued during the period of respondent No:4/Assistant Engineer Smt. Amruthsai calling upon the owner of the building to furnish the documents in respect of the illegal construction which is in progress. The order U/sec.321(1) of KMC Act dated:14-3-2017, the order U/sec.321(2) of KMC Act dated: 31-3-2017 and the order dated:07-04-2017 U/sec.321(3) of KMC Act have been jointly passed by the respondent No:4/Assistant Engineer Smt. Amruthsai and Assistant Executive Engineer/respondent No:2. This shows that the respondent No:4 was working during the period of construction of alleged illegal building. Hence, the respondent No:4 is also responsible for dereliction of her duty.

19. So the materials available on record disclose that respondent No:1 was working as Executive Engineer of the jurisdictional area at the relevant point of the illegal construction and while passing order U/sec.462 of KMC Act.

20. Respondent No.2 was working as Assistant Executive Engineer of the said area at the relevant point of illegal construction and while passing orders U/sec. 321(1), 321(2) and 321(3) of KMC Act.

21. Respondent No:3 was working as Assistant Engineer at the relevant point of time of illegal construction and respondent No:4 was working as Assistant Engineer after taking charge from the respondent No:3 at the relevant point of illegal construction and also while passing order U/sec. 321(1), 321(2) and 321(3) of KMC Act.

22. Hence, the respondent No: 2 to 4 were required to supervise the construction of the building in question from the date of commencement of the construction itself and to take appropriate action to stop illegal construction of the building. The respondent No:1 being the Executive Engineer was duty bound to pass the order U/sec.462 of KMC Act to remove the illegal construction and to take action for removal of the illegal construction at the earliest.

23. It is pertinent to note that respondent No:5 & 6 are the subsequent Assistant Engineer and Assistant Executive Engineer of the said area respectively who were not working at the time of illegal construction and while passing order U/sec.321(1), (2), (3) and U/sec.462 of KMC Act. Hence, no action can be initiated against respondents 5 & 6.

24. It is pertinent to note that the instant complaint is filed before this authority on 19-01-2017. The Assistant Executive Engineer issued notice to the building owner dated: 17-01-2017 U/sec. 308 of KMC Act ie., just two days prior to the date of filing of the instant complaint by the complainant before this authority. After 14-11-2016 ie., the date of representation by the complainant to the Assistant

Executive Engineer/R-2 and Executive Engineer/R-1 complaining against the illegal construction. No action was taken for nearly two months. This shows that respondents 2 to 4 have failed in their duty to stop the illegal construction and the building has been allowed to be constructed in violation of the sanctioned plan and building byelaws. Respondent No:1 did not take any steps to remove the illegal construction after passing order U/sec. 462 of KMC Act.

25. Perusal of the circular of the BBMP., Commissioner dated: 07-08-2015 shows that the Commissioner has delegated the powers by exercising his power U/sec.67 of Karnataka Municipal Corporation Act, 1976 as under (see para 3 & 4 of the circular) :-

“ಪಾಲಿಕೆಯು ಎಲ್ಲಾ ರೀತಿಯಲ್ಲಿಯೂ ಕ್ರಮ ಜರುಗಿಸುತ್ತಿರುವಾಗಲೂ ಕೂಡ ಅನಧಿಕೃತ/ನಕ್ಷೆ ಮಂಜೂರಾತಿ ಉಲ್ಲಂಘನೆ ಕಟ್ಟಡಗಳ ನಿರ್ಮಾಣವನ್ನು ನಿಯಂತ್ರಿಸಲು ಪರಿಣಾಮಕಾರಿಯಾಗಿ ಕ್ರಮಕೈಗೊಳ್ಳಲು ಸಾಧ್ಯವಾಗುತ್ತಿಲ್ಲ.

ಈ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಕೆಳಕಂಡ ಮೂರು ಕ್ರಮಗಳನ್ನು ಇಂತಹ ಎಲ್ಲಾ ಪ್ರಕರಣಗಳಲ್ಲಿ ತೆಗೆದುಕೊಳ್ಳಲು ಉಪ ವಿಭಾಗಗಳ ಸಹಾಯಕ ಕಾರ್ಯನಿರ್ವಾಹಕ ಅಭಿಯಂತರರುಗಳಿಗೆ ಸೂಚಿಸಿದೆ. ಸಂಬಂಧಪಟ್ಟ ಉಪ ವಿಭಾಗದ ಸಹಾಯಕ ಕಾರ್ಯಪಾಲಕ ಅಭಿಯಂತರರು ಕಟ್ಟಡಗಳ ತಳಪಾಯ ತೋಡುವ ಹಂತದಿಂದಲೂ ಕಟ್ಟಡಗಳ ನಿರ್ಮಾಣದ ಬಗ್ಗೆ ಗಮನಹರಿಸಿ, ಕಾಲಕಾಲಕ್ಕೆ ಕಟ್ಟಡದ ಹಂತಗಳ ಬಗ್ಗೆ ಕಛೇರಿ ಕಡತದಲ್ಲಿ ನಮೂದಿಸತಕ್ಕದ್ದು.

ಕ್ರಮ 1: . . . . .



26. A perusal of the office order of the Commissioner, BBMP., dated:29-6-2015 reads as follows:-

“ಬೃಹತ್ ಬೆಂಗಳೂರು ಮಹಾನಗರ ಪಾಲಿಕೆ ವ್ಯಾಪ್ತಿಯಲ್ಲಿ ಮಂಜೂರಾತಿ ನಕ್ಷೆಗೆ ವಿರುದ್ಧವಾಗಿ/ಅನಧಿಕೃತವಾಗಿ ನಿರ್ಮಾಣವಾಗುತ್ತಿರುವ ಕಟ್ಟಡಗಳನ್ನು ಪರಿವೀಕ್ಷಿಸಿ, ವ್ಯತಿರಿಕ್ತ ನಿರ್ಮಾಣ ಕಂಡುಬಂದಲ್ಲಿ ಕ್ರಮವಹಿಸುವ ಅಧಿಕಾರ ಪ್ರತ್ಯಾಯೋಜನೆಯ ಉಲ್ಲೇಖದ ಕಛೇರಿ ಆದೇಶ ಹಾಗೂ ಹಿಂದಿನ ಎಲ್ಲಾ ಸುತ್ತೋಲೆ/ಕಛೇರಿ ಆದೇಶಗಳನ್ನು ರದ್ದುಪಡಿಸಲಾಗಿದೆ. ಮುಂದುವರೆದು, ಬೃಹತ್ ಬೆಂಗಳೂರು ಮಹಾನಗರ ಪಾಲಿಕೆಯಲ್ಲಿನ 28 ವಿಭಾಗಗಳ ಕಾರ್ಯನಿರ್ವಾಹಕ ಅಭಿಯಂತರರುಗಳು ಮತ್ತು 64 ಉಪವಿಭಾಗಗಳ ಸಹಾಯಕ ಕಾರ್ಯನಿರ್ವಾಹಕ ಅಭಿಯಂತರರುಗಳು ಕಾರ್ಯನಿರ್ವಹಿಸುವ ವಿಭಾಗ/ಉಪವಿಭಾಗದ ವ್ಯಾಪ್ತಿಯಲ್ಲಿ, ಮಂಜೂರಾತಿ ಪಡೆದು ನಿರ್ಮಿಸುತ್ತಿರುವ ಕಟ್ಟಡಗಳನ್ನು ಪರಿವೀಕ್ಷಿಸಿ, ಮಂಜೂರಾತಿ ನಕ್ಷೆಗೆ ವ್ಯತಿರಿಕ್ತ ನಿರ್ಮಾಣ ಅಥವಾ ಅನಧಿಕೃತ ನಿರ್ಮಾಣ ಕಂಡುಬಂದಲ್ಲಿ ಕೆ.ಎಂ.ಸಿ. ಕಾಯ್ದೆ, 1976 ರ ಸೆಕ್ಷನ್ 321(1) ರಂತೆ ತಾತ್ಕಾಲಿಕ ಆದೇಶ, 321(2) ರಂತೆ ಕಾರಣ ಕೇಳಿ ಪತ್ರ ಮತ್ತು 321(3) ರಂತೆ ಸ್ಥಿರೀಕರಣ ಆದೇಶ ಹೊರಡಿಸಿ ಕ್ರಮ ಕೈಗೊಳ್ಳುವ ಅಧಿಕಾರವನ್ನು ಸಂಬಂಧಪಟ್ಟ ಉಪವಿಭಾಗದ ಸಹಾಯಕ ಕಾರ್ಯನಿರ್ವಾಹಕ ಅಭಿಯಂತರರು ರವರಿಗೆ ಹಾಗೂ ಸೆಕ್ಷನ್ 462 ರಂತೆ ವ್ಯತಿರಿಕ್ತ ನಿರ್ಮಾಣ ಅಥವಾ ಅನಧಿಕೃತ ನಿರ್ಮಾಣ ತೆರವುಗೊಳಿಸುವ ಆದೇಶ ಹೊರಡಿಸಿ ಕ್ರಮ ಕೈಗೊಳ್ಳುವ ಅಧಿಕಾರವನ್ನು ಸಂಬಂಧಪಟ್ಟ ಕಾರ್ಯನಿರ್ವಾಹಕ ಅಭಿಯಂತರರು ರವರಿಗೆ ಪ್ರತ್ಯಾಯೋಜನೆಯನ್ನು ನೀಡಿ ಆದೇಶಿಸಲಾಗಿದೆ.”

27. The above referred Circular and office order of the Commissioner, BBMP., makes it clear that the respondent No:2 to 4 are duty bound to take action against the illegal construction from the stage of commencement of the construction of the building itself. The respondent No:1 being the Executive Engineer is bound to remove the illegal construction after passing order U/sec.462 of KMC Act. The circular of the BBMP., Commissioner dated: 07-08-2015 also provides for intimating the competent authorities to disconnect the electrical connection, water connection and drainage connection to the said unauthorized illegal structure. But in this case except passing order U/sec.321(1), 321(2), 321(3) and 462 of KMC Act, after filing the instant complaint by the complainant before this authority, nothing is forthcoming to come to the conclusion that the respondents have inspected the construction of the building at the earliest point of time itself. Eventhough respondent No:1 and 2 have stated in their comments that construction has been stopped, no documents like photographs are produced for having stopped the construction at the time of commencement of construction itself. So the inaction of the respondent No: 2 to 4 at the earliest point of time ie., from the date of commencement of construction and the inaction of the respondent No:1 to remove the illegal construction itself shows that respondent No:1 to 4 have committed dereliction of duties and allowed the building to be constructed in violation of sanctioned plan and building byelaws.

28. Therefore it appears that there are prima-facie materials against the respondent No:1 to 4 for the above said misconduct in their duties.

29. The facts and materials on record prima-facie show that, the respondent No:1 to 4 have committed misconduct as per Rule 3(1) (i) to (iii) of Karnataka Civil Services (Conduct) Rules, 1966/ Presently Karnataka Civil Services (Conduct) Rules, 2021. 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 the respondent No. (1) Sri. Prakash, Executive Engineer, Vijayanagara Division, BBMP., Bengaluru, (2) Sri. Nagesh, Assistant Executive Engineer, Vijayanagara Sub-Division, BBMP., Bengaluru, (3) Sri. Hemanth Kumar, Assistant Engineer, Ward No:124, Hosahalli, BBMP., Bengaluru and (4) Smt. Amruthsai, Assistant Engineer, Vijayanagara Sub-Division, BBMP., Bengaluru (Date of retirement is not available ) and to entrust the inquiry to this Authority under Rule 14-A of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957.

30. Further, as per section 12(4) of Karnataka Lokayukta Act, 1984, the Competent Authority shall intimate to this Authority within three months 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 B.S.PATIL ]

Upa-Lokayukta  
State of Karnataka,  
Bengaluru.

