

**KARNATAKA LOKAYUKTA**

No:Compt/Uplok/BCD-1224/2018/ARLO-1.

Date:05-01-2022

1-6

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

Sub:- Initiation of proceedings against the respondent No:1 Sri. Bheemesh, Executive Engineer, Vijayanagara Division, BBMP., Bengaluru, (2) Sri. Manohar, Assistant Executive Engineer, Vijayanagara Sub-Division, BBMP., Bengaluru and (3) Sri. Shivanna, Assistant Engineer, Ward No: 124, Hosahalli, 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. Bheemesh, Executive Engineer, Vijayanagara Division, BBMP., Bengaluru, (2) Sri. Manohar, Assistant Executive Engineer, Vijayanagara Sub-Division, BBMP., Bengaluru and (3) Sri. Shivanna, Assistant Engineer, Ward No: 124, Hosahalli, BBMP., Bengaluru (hereinafter referred to as 'Respondent No:1 to 3' for short).

2. The substance of the complaint is that, a building being constructed opposite to GIA Hospital, 13<sup>th</sup> cross, 5<sup>th</sup> main road, RPC Layout, Near Rameshbabu Circle, Vijayanagara 2<sup>nd</sup> stage, Vijayanagara, Bengaluru, Ward No:124 (Hosahalli) with all

violations of sanction plan and without leaving setback all over the building and illegal seller and extra floor has been also constructed.

3. It is also alleged that both the Executive Engineer and the Assistant Executive Engineers 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 the representation made to the Assistant Executive Engineer/respondent No:2 and Xerox copy of the photograph.

5. In spite of service of notice to the respondent No:1 he did not appear and submit his comments.

6. The respondent No:2 and 3 filed their joint comments dated:09-08-2018 stating that the construction has been stopped and notice has been issued on 14-05-2018 as per section 308 of KMC, Act and also issued notice U/sec. 321(1) of KMC Act on 08-06-2017. Along with the comments, the respondent No:2 & 3 filed copy of the notice dated:14-05-2018 issued U/sec. 308 of KMC Act, order dated:08-06-2018 U/Sec.321(1) of KMC Act.

7. Afterwards, the respondent No:3 filed further action taken report dated:06-05-2019 along with undated confirmation order U/sec.321(3) of KMC Act, a copy of orders dated:09-06-2018 U/sec.321(2) of KMC Act and order dated:28-06-2018 U/sec.462 of KMC Act.

8. The Assistant Engineer stated in his further action taken report that the Executive Engineer has passed orders dated:28-06-2018

U/sec.462 of KMC Act. The action has been taken against the owner of the building. Accordingly, prays for closing the case.

9. Afterwards inspite of repeated notices/reminders the respondent No: 2 & 3 did not file their further action taken report. The respondent No:1 not at all appeared and filed his comments.

10. The perusal of the orders passed by the Assistant Executive Engineer U/Sec.321(1), 321(2) and 321(3) discloses that the orders have been passed after commencement and construction of the building by the owner. The perusal of the orders passed by the Executive Engineer U/sec.462 of KMC Act, 1976 on 28-06-2018 also discloses that the order has been passed after the completion of the construction.

11. Further perusal of the orders of Assistant Executive Engineer and Assistant Engineer dated:09-06-2018 U/sec.321(2) of KMC Act,1976 also discloses that there is a construction violating the sanctioned plan and building byelaws upto the extent of 85% in some portions of all the floors.

12. It is also pertinent to note that, the respondent No:1 is Executive Engineer, respondent No:2 being the Assistant Executive Engineer and respondent No:3 being the Assistant Engineer of Vijayanagara Division, Sub-Division Hosahalli respectively BBMP., Bengaluru are bound to supervise the construction of the building in question from the date of commencement of the construction itself and take appropriate action to stop the illegal construction of the building.

13. It is also pertinent to note that the instant complaint has been filed by the complainant before this authority on 25-04-2018. The Assistant Executive Engineer issued notice to the building owner

on 14-5-2018 U/sec. 308 of KMC Act and passed orders U/sec.321(1) of KMC Act on 8-6-2018 ie., after filing of the instant complaint by the complainant before this authority. This shows the respondents have failed in their duties to stop the illegal construction and the building has been allowed to be constructed in violation of sanctioned plan and building byelaws.

14. The perusal of the circular of the BBMP., Commissioner dated:7-8-2015 in which the Commissioner has delegated the powers by exercising his power U/sec.67 of Karnataka Municipal Corporation Act, 1976 at para- 3 & 4 of the circular it has been stated as follows :-

“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: . . . . .”

15. The 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.”

16. The above referred circular and office order of the Commissioner, BBMP., makes it clear that the respondents are duty bound to take action against the illegal construction from the commencement of the construction of the building itself. The circular of the BBMP., Commissioner dated:07-08-2015 provides for intimating the competent authorities to disconnect the electrical connection, water connection and drainage connection to the said unauthorized illegal structures. But in this case except passing orders U/sec.321(1), 321(2), 321(3) and 462 of KMC Act, after the date of filing of the instant complaint by the complainant before this authority nothing is forthcoming to come to the conclusion that the respondents have supervised the construction of the building at the earliest point of time itself. Eventhough respondent No:2 & 3 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 respondents at the earliest point of time ie., from the date of commencement of construction itself shows that the respondents have committed dereliction of their duties and allowed the building to be constructed in violation of sanctioned plan and building bye-laws.

17. Therefore it appears that there is a prima-facie material against the respondent No:1 to 3 for the above said misconduct in their duties.

18. The facts and materials on record prima-facie show that, the respondent No:1 to 3 have committed misconduct as per Rule 3(I) (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 the respondent No:1 Sri. Bheemesh, Executive Engineer, Vijayanagara Division, BBMP., Bengaluru, (2) Sri. Manohar, Assistant Executive Engineer, Vijayanagara Sub-Division, BBMP., Bengaluru and (3) Sri. Shivanna, Assistant Engineer, Ward No: 124, Hosahalli, 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.

19. 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.

*Kalyan 06/11/22*  
[ **Justice B.S.PATIL** ]  
Upa-Lokayukta  
State of Karnataka,  
Bengaluru.

