

BD/3003 to 07/2017

KARNATAKA LOKAYUKTA

- 1) NO: COMPT/UPLOK/BD/3003/2016/DRE4
- 2) NO: COMPT/UPLOK/BD/3004/2016/DRE4
- 3) NO: COMPT/UPLOK/BD/3005/2016/DRE4
- 4) NO: COMPT/UPLOK/BD/3006/2016/DRE4 &
- 5) NO: COMPT/UPLOK/BD/3007/2016/DRE4

M.S.Building,  
Dr.B.R.Ambedkar Veedhi,  
Bengaluru, Date: 28/02/18

REPORT UNDER SECTION 12(1) OF  
KARNATAKA LOKAYUKTA ACT, 1984

Sub: In the matter of redressal of grievance of the complainant Sri.A.G.Yogendra - Retired Forester, Former Principal Secretary, Right to Information & Protection of Human Rights, #MIG 314, KHB Colony, Vinobhanagar, Shivamogga - reg.

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An investigation was taken up u/Sec. 9 of Karnataka Lokayukta Act, 1984 on the complaint filed by Sri.A.G.Yogendra - Retired Forester, Former Principal Secretary, Right to Information & Protection of Human Rights, #MIG 314, KHB Colony, Vinobhanagar, Shivamogga (hereinafter referred to as 'the complainant - for short'), against 1) Mohan.N.Gangolli - Deputy Conservator of Forest, Mysuru Paper Mills, Sagar and 2) Sri.Shivakumar - Deputy Director of Social Welfare, Shivamogga district [Complaint No:3003/2016], 1) Sri.Venkatesh - Asst. Conservator of Forest, Sagar division, Sagar and 2) Sri.H.S.Ganapathi - Taluk Social Welfare Officer, Sagar [Complaint No:3004/2016], 1)Sri.G.R.Keshavmurthy - Incharge Asst. Conservator of Forest, Hosanagar

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division and 2) Sri.Mallikarjun – Taluk Social Welfare Officer, Hosanagar taluk [Complaint No:3005/2016], 1)Sri.R.D.Naik – Former Asst. Conservator of Forest, Sorab and 2) Sri.Ravi – Asst. Director, Social Welfare Office, Sorab [Complaint No:3006/2016] and 1)Sri.Rajanna – Former Asst. Conservator of Forest, Shikaripur, 2) Sri.Srinivas – Assistant Director, Social Welfare office, Shikaripur and 3) Sri.H.M.Jagadish kumar – Asst. Conservator of Forest, Shikaripur [Complaint No:3007/2016] (hereinafter referred to as ‘respondents No.1 and 2, respectively in respective complaint number files – for short’).

2. Brief facts of the case are –

1) The respondents in violation of conditions contemplated under the provisions of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, granted morethan 200 acres of forest land to ineligible persons by taking illegal gratification and issued the grant certificates. The 1<sup>st</sup> respondent, who is in the State Forest Services, placed additional charge of Deputy Conservator of Forest (DCF), Sagar division, without legal authority, illegally issued grant certificates. It is alleged that the respondents have conducted proceedings dated:17/03/15, 20/03/15 and 05/07/16 in respect of forest land by taking illegal gratification of Rs.3,000/- per gunta [In complaint No.3003/2016];

2) The respondents being the members of Sub-Divisional Level Committee (SDLC), illegally recommended the names of persons to the District Level Committee (DLC) for the grant of forest land in various sub divisions of Shivamogga district by receiving bribe [In complaint Nos.3004/2016 to 3007/2016];

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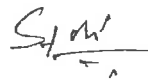
3. Comments of the respondents have been called. The respondents submitted comments. Respondent No.1 in complaint No:3003/2016 contended that –

- 1) Being in the service of State Forest, he has been discharging his duties with due honesty, devotion and integrity. False and frivolous complaint is filed against him. Public interest litigation (W.P.No.48410/2016) filed against him before the Hon'ble High Court of Karnataka has been dismissed on 23/09/16. It was observed in the said writ petition that, it is an interim arrangement keeping him in additional charge of DCF, Sagar division. The order of Central Administrative Tribunal (CAT) referred in para No.9 of the complaint is not concerned to him. The direction given by CAT and KAT are concerned, it is the duty of the department (DPAR) to interpret and initiate seniority of non-cadre officers to hold post in particular district and place. He has contended that he does not have any say on IFS Cadre Rules, 1966 as the same is not applicable to him;
- 2) Central Government enacted rules viz., Scheduled Tribes & other Forest Traditional Dwellers (Recognition of Forest Right) Rules, 2008 to recognize and vesting of forest right and occupation in the forest, in forest dwelling scheduled tribes and other traditional dwellers residing in such forest. 1<sup>st</sup> respondent conceded that, for issuance of *hakku patra* recommendation by the Forest Rights Committee, Grama Sabha, Sub-divisional Committee and District Committee is required. Those committees are monitoring committees to give *hakku patra* to scheduled tribes and other traditional dwellers;
- 3) The District Level Committee (DLC) consists of Deputy Commissioner, DCF, Deputy Director of Social Welfare department and 3 members of Zilla Panchayath nominated by district administration. The DLC conducted proceedings on 17/03/15, 20/10/15 and 05/07/16 of

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Sagar, Sorab, Hosanagar and Shikaripur taluk. He has admitted that, *hakku patra* was issued to Sri.Vitobha Raam Mahale. He has asserted that, since he has been placed in additional charge of DCF, Sagar and has been entrusted with discharge of current duties of the post of DCF, Sagar, had statutory power for issuing *hakku patra*. Thus, the allegation that he did not had authority to issue *hakku patra* is not sustainable;

- 4) He has further contended that, he and Deputy Director of Social Welfare department, Shivamogga under the Chairmanship of Deputy Commissioner, Shivamogga have discharged their duty. It is false to contend that he has taken bribe for issuance of *hakku patra*. False allegation is made by the complainant with a malafide intention as he has lost the writ petition before the Hon'ble High Court of Karnataka. While issuing *hakku patra*, so many procedures required to be followed. Person, who resides in forest land and dependent on the forest for more than 75 years, is entitled for grant. In case of non-availability of requisite documents, oral version of such persons with his affidavit and age proof can be taken into consideration while recommending the names of beneficiaries. All the rules are scrupulously followed to finalize the list of beneficiaries. Government of Karnataka issued circular dated:21/12/13 to the effect that. To establish the rights of forest dwellers certain documents, such as aadhaar card, election card, pan card, driving license, birth certificate and proof of age;
- 5) He has contended that, there is no specific and definite allegation in the complaint. Therefore, the authority is not competent to act under Section 12(3) of Karnataka Lokayukta Act. The contents of complaint are factually false and not tenable in law.



4. Respondent No.2 in his comments in complaint No:3003/2016 has contended that –

- 1) Government of India has introduced Forest Right Act, 2006 to protect the interest of Scheduled Tribes and other Traditional Forest Dwellers, who are residing and depending on forest. The forest rights on ancestral lands and their habitant were not adequately recognized in consolidation of the State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other Traditional Forest Dwellers who are integral to the very survival and sustainability of the forest eco system;
- 2) Government of India framed the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Rules 2008. Under Rules 3, 5, 7 and 9 four kinds of committees are formed. They are, Gram Sabha (Village Level Forest Right Committee), Sub-Divisional Level Committee, District Level Committee and State Level Monitoring Committee;
- 3) He was not holding the charge of office of Deputy Director, Social Welfare, Shivamogga on 17/03/2015 and 20/10/2015, the dates are which proceedings of DLC held. He has contended that, he has assumed charge of Deputy Director, Social Welfare Department on 02/07/2016. He has not issued any *hakku patra* in respect of DLC proceedings dated 17/03/2015 and 20/10/2015. Since, he has reported for duty on 02/07/2016, he has not signed the DLC proceedings dated 17/03/2015 and 20/10/2015. The complainant challenges only DLC proceedings dated 17/03/2015 and 20/10/2015. He has not challenged the proceedings dated 05/07/2016. 1) Sri Ikkeri, IAS, Deputy Commissioner, Shivamogga, 2) Sri Mohan Gangolli, D.C.F of Sagar sub-division, 3) Sri Dharmappa, Deputy Director, Social Welfare Department, 4) Sri Kagodu Ratnakara, 5) Sri Shivalingegowda

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and 6) Smt. Mamatha Sali, Members Zilla Panchayath, Shivamogga participated in the DLC proceedings dated 17/03/2015 and 20/10/2015;

- 4) Each and every file will be verified by Village Level Forest Right Committee. After field inspection, survey with sketch Village Level Forest Right Committee will recommend the FRA files, which are eligible for sanction to Sub-divisional Level Committee. The Sub-divisional Level Committee will verify the files recommended by Village Level Forest Right Committee. After due verification of records claims, evidence and forest opinion, recommends only eligible claims to District Level Committee. It is false to allege that, *hakku patras* are issued by taking bribe. DLC recommends only those files which were recommended by SDLC;
- 5) Section 10 of Forest Rights Act 2006 confers protection to the action taken in good faith. Further, chapter IV of the Act provides provision for appeal by aggrieved parties. 2<sup>nd</sup> respondent has prayed to close the case.

5. Respondents in their comments in complaint Nos.3004/2016 to 3007/2016, denied the allegations of illegal grant of forest lands. 1<sup>st</sup> respondent in complaint No:3007/2016 contended that he was not working as Asst. Conservator of Forest, Shikaripur as on 21/06/16. He has handed over the charge to Sri.H.M.Jagadish kumar (3<sup>rd</sup> respondent) on 13/05/2016.

6. Reiterating the complaint averments the complainant filed rejoinder/additional rejoinder.

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7. Consideration of the material on record shows that:-

- 1) Admittedly, first respondent-Sri.Mohan S.Gangolli belongs to State Forest Service (SFS) and placed in-charge of DCF, Sagar sub-division w.e.f. 31/01/2015 until further orders at the instance of the then Speaker of the Legislative Assembly. (Notification dated 23/01/2015 No.DPAR 05SFP2015 is produced at Annexure-E to the complaint). In other words, he was not holding regular charge of the post of DCF, Sagar sub-division. Post of DCF is a cadre post with requisite qualification of Indian Forest Service (IFS). Since the first respondent belongs to SFS, he could not have exercised statutory powers of the office of DCF, of which he was placed in-charge or additional charge of the current duties;
- 2) In note-sheet of DPAR-5 SFP 2015 (Annexure-D to the complaint) a note is put up to the effect that, for the year 2013-14, the name Sri.Mohan S.Gangolli is not appearing in the list of eligible candidates to be promoted from SFS to IFS. Thus, the first respondent, who was holding in-charge of the vacant post of DCF, Sagar sub-division should not have exercised statutory powers of the office of DCF. But, significantly, he has discharged the statutory powers of the office of DCF, Sagar sub-division by signing the proceedings of DLC dated 17/03/2015, 20/03/2015 and 05/07/2016 as one of the members of DLC which is constituted u/Sec. 6 of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 which is a statutory function and not administrative function;
- 3) Rule 9 of the Indian Forest Service (cadre) Rules, 1966 provides that, if a non-cadre officer is posted on temporary basis to the cadre post, his posting cannot be continued beyond a period of three months without the prior approval of Central Government. In this case, it appears that 1<sup>st</sup> respondent worked in additional charge of DCF, Sagar sub-division beyond the period of three months without there being approval from

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the Central Government and clearly appears to be politically motivated as is clear that he was posted at the recommendation of the then Speaker of the Legislative Assembly Sri Kagodu Thimmappa, who *vide* Annexure-B to the complaint recommended for posting 1<sup>st</sup> respondent only to the vacant post of DCF, Sagar sub division;

- 4) The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 has been enacted by the Parliament to recognize and vest the forest rights and occupation in forest dwelling Scheduled Tribes and other Traditional Forest Dwellers who have been residing in such forest for generations but whose rights could not be recorded; to provide for a frame work for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land. The said Act received the assent of the President on 29/12/2006. By virtue of power conferred under Section 14 of the Act, Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Rules 2007 are framed by the Central Government;
- 5) Rule 13 of the Rules prescribes evidence for determination of forest rights. Sub-rule (1) of Rule 13 prescribes 9 kinds of evidence. As contemplated in sub-rule (3) of Rule 13, the Gram sabha, the SDLC and the DLC shall consider more than one of the evidences in determining the forest rights;
- 6) As early as 18/09/1990 Government of India, Ministry of Environment and Forests, Department of Environment, Forest and Wildlife issued Circular No.13-1/90-FP (produced at Annexure-U to rejoinder), in which guidelines have been issued to all the State Governments and Union Territories to prepare the list of encroachments and only those encroachments proposed to be regularized which were taken place before 24/10/1980. In the said Circular, it is specifically stated that,

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- no case of encroachments which have taken place after 24/10/1980 should be regularized;
- 7) Pursuant to the direction issued by Hon'ble Apex Court in Godavarman's case (W.P.No.202/1995), Government of Karnataka prepared working plan in the year 2002 (Annexure-Z-1 to the rejoinder) in respect of forest land encroachments prior to 27/04/1978. In so far as forest land encroachments in Sagar sub-division, Shivamogga district is concerned working plans were prepared by the State Government in the year 2002 and 2012. As per the working plans prepared in the year 2002 and 2012, only 2216 persons are shown to be encroachers of forest land to an extent of 1401.62 hectares prior to 27/04/1978. The said working plan said to have been approved by the Government of India vide letter No.8-50/95 dated 15/05/1996. Based on the approval by the Government of India, Department of Forests, Ecology and Environment, Government of Karnataka issued notification/proceedings (Copy of proceeding produced by the complainant with Memo dated 02/08/2017) in which the State Government formulated rules/criteria/eligibility for grant of forest land to the encroachers prior to 27/04/1978. Encroachment of forest lands by certain categories of persons stated in the said proceeding. They are, i) persons belonging to SC/ST, ii) landless marginal agricultural labourers and iii) insufficient holders of land;
- 8) Before notifying the forest as reserve forest, preliminary and final notification will be issued by the State Government u/Sec.4 of Karnataka Forest Act, 1963 and objections are called and on considering the objections of any persons having interest in the forest land same is notified as reserve forest. Section 16 of the Act confers statutory right of appeal to an aggrieved person and on issue of the



notification it becomes reserve forest and no one could claim any right in the reserve forest;

9) *Vide* proceedings dated 17/03/2015 (Annexure-H to the complaint), 20/10/2015 (Annexure-J to the complaint) and 05/07/2016 (Annexure-P to the rejoinder), the DLC has approved the names of many persons for grant of forest lands and vast forest lands granted to them. It is evident from the proceedings that *hakku patras* were also issued to many persons. The proceedings do not speak out the yardstick applied for approval of the names of those persons. The claim for grant of forest lands for those persons was decided only on the basis of 'statement of elders'. No other evidence as is required under Rule 13 nor the working plans for the year 2002 and 2012 were taken into consideration by the DLC. "Working plan" is prepared by the forest department on the basis of actual survey and approved by Government of India and the same is gazetted. Therefore, it is the primary and the best piece of evidence for determination of forest rights as is contemplated under Rule 13 of Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 to determine the forest land encroachers prior to 27/04/1978. When there is a primary evidence and public document, same is conveniently ignored to illegally confer occupancy rights on ineligible persons which might be done with vested interest;

10) It is further evident that in proceeding dated 20/10/2015 at Sl. No.571, 572, 574 and 575 about 29 acres of forest land granted to Ganapathi s/o Manjappa Gowda, Shanmukappa s/o Manjappa Gowda, Manjappa Gowda s/o Rudrappa Gowda and Meenakshamma w/o Manjappa Gowda, who belonged to the same family, which can be made out from the electoral list of Sagara constituency (Electoral list is produced at Annexure-AN to rejoinder). It is further evident that prior to such grant said Manjappa Gowda s/o Rudrappa Gowda held land to



- an extent of 8 acres in Sy.No.157 of Mallanduru Village, Sagara Taluk (copy of land details/cultivator details is produced at Annexure-AM to the rejoinder). It is appearing from the said proceeding (at Sl.No.576 to 587) that property bearing Sy.No.24 lying in the limits of Bhanukuli Village Panchayath was granted. Sy.No.24 of Bhanukuli lies within Wildlife sub-division, Kargal and it is a reserved forest area. (Copy of list of reserved forest is produced at Annexure-AC to rejoinder);
- 11) The land within tiger reserve or reserve forests is not available for grant what appears from the above proceedings is that, grants are appeared to have been made in favour of persons of choice of the vested interest persons which may be with political intention to favour them;
- 12) Property bearing Sy.No.31 of Hebbarige Village, Anandapura Hobli, Sagara Taluk is tank-bed (RTC for the year 2016-17 is produced at Annexure-AE to rejoinder);
- 13) In DLC proceeding dated 05/07/2016 at Sl.No.917 one acre of land in the said survey number has been granted to one Devaraja H.M S/o Manja Naik. Further, gomal land i.e. Sy.No.11 of Hebbarige Village (copy of RTC for year 2016-17 is produced at Annexure-AF to rejoinder) has been granted to one Goraknatha S/o Kollurappa, Sathish S/o Srinivasa and Geetha W/o Dinesh Jodi which is appearing in Sl.No.18, 23, 919 and 920 of DLC proceeding dated 05/07/2016;
- 14) It is further evident that, more than 14 acres of land in Sy.No.7/1, 7/2, 7/3, 7/5 and 7/6 of Hiremaithi Village of Hosanagara Taluk granted to members of same family and the same is appearing in Sl.No.589 to 591, 593 and 594. It is evident from electoral list (produced at Annexure-AQ) of Sagara assembly constituency that the grantees at Sl.No.589 to 591, 593 and 594 are members of the same family;



15) All the three impugned proceedings passed by DLC *prima facie* appear to be bad in law and opposed to the spirit of the Act and the Rules framed there under. DLC is constituted by three District Level Officers headed by Deputy Commissioner with an intention to keep vigil and check on any illegal recommendations. But, the said Committee itself indulged in malpractice. If that is so then who could be trusted and how the conservation of forest can possible?

16) Admittedly, first respondent signed the DLC proceedings dated 17/03/2015, 20/10/2015 and 05/07/2016 as DCF, Sagar sub-division, Sagar, whereas the second respondent signed the DLC proceeding dated 05/07/2016. It is worth to note that DLC proceeding dated 17/03/2015 and 20/10/2015 indicate that three members of District Panchayath have not signed the proceeding. In the proceeding dated 05/07/2016 signature of one of the members of District Panchayath is missing. None of the members of Zilla Panchayath have signed the proceedings dated 17/03/2015, though they are shown to be present during the proceeding. In so far as proceeding dated 20/10/2015 is concerned, none of the members of Zilla Panchayath were present. Smt.Mamatha Sali and Sri.Kalagodu Ratnakar, members Zilla Panchayath, Shivamogga have signed the proceeding dated 05/07/2016. Another Zilla Panchayath member Sri.Shivalingegowdru has not signed the proceeding. Thus, it is evident that the entire proceedings of DLC dated 17/03/2015, 20/10/2015 and 05/07/2016 are *prima facie* illegal. The DLC without due regard to process of law and without quorum went on granting the reserve forest land;

17) In this complaint it is brought to the notice of this Institution that, DLC has granted about 2,000 acres of forest land to ineligible persons. It is significant to point out that in Sagara division alone forest lands to such an extent have been illegally granted. If that is

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taken in to consideration, in the entire district of Shivamogga and other parts of the State illegal grant of much larger extent of forest land cannot be ruled out;

- 18) As per the statistics of Principal Chief Conservator of Forest for the State of Karnataka, in Shivamogga circle alone there were about 50,172 encroachment cases occupying about 81,501.65 acres are yet to be evicted. State-wise figure shows that there are about 1,10,626 number of encroachment cases occupying about 2,04,442.16 acres of forest land. If the forest lands are allowed to be encroached further, days are not too far in extinction of forests in the entire State of Karnataka;
- 19) It is to be noted that, Shivamogga lies in Western Ghat region, a hotspot of biodiversity in India. The present scenario indicates that the Western Ghats is facing a new threat due to changing rainfall patterns besides continuing pressure from developmental activity. A more uncertain rainfall pattern is one of the biggest impacts of climate change. The rainfall pattern in the Western Ghats changing for the worse and thereby giving rise to global warming. State is not only the protector of its subject but also the protector of environment and ecology. There must be systematic approach to balance the development and environment. It is in the interest of the State that its subjects to follow the law, not to break the law. The grant of forest land to ineligible persons by way of illegal proceedings cannot be tolerated;
- 20) Before issuing *hakku patras* the respondents ought to have acted in utmost good faith. Section 10 of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 protects only those Acts which are done in good faith. Materials on record do not make out any act of good faith but show that their act was with an oblique and malafide intention.

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8. In view of said facts and material on record, except the reply of respondent No.1 in complaint No:3007/2016, replies of all other respondents are found not sufficient to drop the proceedings against them, a report u/Sec. 12(3) of Karnataka Lokayukta Act, 1984 recommending the Competent Authority to initiate disciplinary proceedings against the them.

9. The grievance of the complainant made in this complaint is well founded. Therefore, cause of action has arisen to this authority to make recommendation u/Sec. 12(1) of Karnataka Lokayukta Act, 1984 to submit action taken report for resumption of illegally granted forest land to the Government under the proceedings dated:17/03/2015, 20/10/2015 and 05/07/2016.

10. Therefore, recommendation is hereby made to the competent authority u/Sec. 12(1) of Karnataka Lokayukta Act, 1984 to redress the grievance of the complainant in the manner specified above within one month from the date of receipt of this recommendation and the intimation as to further action in the matter be sent to this authority.

Copies of connected records are enclosed.

  
(JUSTICE SUBHASH B ADI) 28/2/18

Upalokayukta-2,  
State of Karnataka.

