

KARNATAKA LOKAYUKTA

No. Uplok/MYS-1641/2014/DRE-1 Multi Storied Buildings,
Dr.B.R.Ambedkar Veedhi,
Bengaluru 560 001.
Dated: 26/6/2020

**Report under Section 12(3) of Karnataka Lokayukta
Act, 1984**

Sub: Proceedings against

1. Sri.M.Rajappa, the then Panchayath Development Officer, Eshwarahalli Gram Panchayath, Chikmagalur,
2. Sri.S.K.Paramesh the then Panchayath Development Officer, Eshwarahalli Gram Panchayath, Chikmagalur,
3. Sri.R.Thimmegowda, I/c.Assistant Executive Engineer, Panchayath Raj Engineering Sub-Division, Chikmagalur,
4. Sri.S.V.Divakar, the then Junior Engineer, Taluk Panchayath, Chikmagalur, and
5. Sri.S.Anilkumar, the then Junior Engineer, Taluk Panchayath, Chikmagalur.

1. On the basis of complaint filed by Sri.Muniya Bhovi S/o.Yellabhovi, Basavanakodi, Eshwarahalli Post, Lakky Hobli, Chikmagalur Taluk and District, against (1) K.Shivegowda, the then Executive Officer, Taluk Panchayath, Chikmagalur Taluk, (2) N.M.Mruthyunjaya, the then Executive Officer, Taluk Panchayath, Chikmagalur Taluk, (retired) (3) Sri.V.H.Kulkarni, the then Panchayath Development Officer, Eshwarahalli Gram Panchayath, Chikmagalur Taluk, (4) Sri.M.Rajappa, the then Panchayath Development Officer, Eshwarahalli Gram Panchayath, Chikmagalur Taluk, (5) Sri.S.K.Paramesh, the then Panchayath Development Officer, Eshwarahalli Gram Panchayath, Chikmagalur Taluk, (6) Sri.Somashekar, the then Panchayath Development Officer,

Eshwarahalli Gram Panchayath, Chikmagalur Taluk, (dead), (7) Sri.R.Thimmegowda, I/c.Assistant Executive Engineer, Panchayath Raj Engineering Sub-Division, Chikmagalur, (8) Sri.H.Nagaraja Naik, the then Assistant Executive Engineer, Panchayath Raj Engineering Sub-Division, Chikmagalur, (9) Sri.S.V.Divakar, the then Junior Engineer, Taluk Panchayath, Chikmagalur, (10) Sri.K.P.Thammaiah, the then Junior Engineer, Taluk Panchayath, Chikmagalur, (11) Sri.S.Anilkumar, the then Junior Engineer, Taluk Panchayath, Chikmagalur, (12) Smt.Vanajakshamma, the then President, Eshwarahalli Gram Panchayath, Chikmagalur Taluk, (13) Smt.Lakshamma, the then President, Eshwarahalli Gram Panchayath, Chikmagalur Taluk, (14) Sri.V.R.Huligowda, the then President, Eshwarahalli Gram Panchayath, Chikmagalur Taluk, (15) Smt.Kavitha K.C, Rozgar Assistant, Eshwarahalli Gram Panchayath, and (16) Sri.Sanjay S.O, Technical Assistant Engineer, Eshwarahalli Gram Panchayath, Chikmagalur Taluk and District, an investigation under Section 9 of the Karnataka Lokayukta Act, 1984 was taken up.

2. The brief averments of the complaint are that, in Eshwarahalli Gram Panchayath of Lakya Hobli, Chikmagalur Taluk under NAREGA Scheme only few works were got executed through labourers for some days only and even they were not paid wages. He has further contended that he has also worked as a labourer, but even he has not been paid wages. It is further alleged that later the respondents did not invite the labourers for work and have executed the work with the help of JCB. It is further alleged that the respondents have misappropriated the funds released under Gram Sadak Yojane, Ashraya and other developmental schemes.
3. In his further complaint dt.9/8/14, he has further alleged that the respondents have shown the works which were already executed during 2002-03, in the estimate of works for the year 2009-10.

4. The complainant has produced copies of M.B. 378 and information furnished under RTI Act regarding the civil works executed under NAREGA Scheme.
5. The 1st to 9th, 13th to 16th respondents as shown in the original face sheet dt.31/5/14 have submitted comments denying the complaint allegations. The complainant has filed rejoinder. The matter had been referred to the S.P, KLA, Chikmagalur to investigate and submit report. Accordingly he has submitted the report, interalia stating that in the works relating to construction of drainage and compound, the work of earth excavation has been executed through JCB and remaining works have been executed by engaging labourers. Therefore, on the basis of the said report and further information furnished by the P.I, KLA, Chikmagalur dt.18/11/2019, the 1st to 16th respondents were arraigned afresh as shown in the face sheet dt.23/10/2019. **The 6th respondent was reported dead.** The 12th respondent has not filed comments.
6. The comments of the said newly arrayed 1st to 5th, 7th to 11th, and 13th to 16th respondents are in file. The 1st and 2nd respondents have submitted that they were the Executive Officers of Taluk Panchayath from 2008-09 to 2009-10 and 22/7/2010 to 7/10/13 respectively. They have further contended that the works under NAREGA Scheme shall be executed under the guidance of the Engineers of Panchayath Raj Engineering Department and the PDOs shall get the works executed through labourers and they are responsible for payment of wages.
7. 3rd, 4th, 9th and 11th respondents have submitted their comments denying all the allegations of the complainant interalia stating that since there were rock (ಬಂಡೆ-ಕಲ್ಲು) and hard soil, it was not possible to excavate manually, and JCB was used only for the said purpose as per the instructions of Technical Assistant.

8. The 5th respondent has contended that he was the PDO from June 2010 to June 2013 and the works have been executed as per the guidelines issued under NAREGA Scheme and as per the directions of the Executive Officer, Taluk Panchayath, Chikmagalur.
9. The 7th respondent has filed comments denying the complaint allegations. The 8th respondent has contended that he was the Assistant Executive Engineer in Panchayath Raj Engineering Sub-Division, Chikmagalur from 2011-12 to 2013-14 and none of the works as stated in the complaint was within his jurisdiction.
10. The 10th respondent has filed comments on 18/6/18 that he has never worked in Chikmagalur Taluk and he is working as Assistant Engineer in Kadur Taluk of Chikmagalur District.
11. The 13th, 14th and 16th respondents in their comments have contended that the complaint allegations do not pertain to them. The 15th respondent has denied the complaint allegations.
12. Perused the report submitted by the S.P, KLA, Chikmagalur. In the report he has stated that he has verified the documents relating to following 4 works executed under NAREGA Scheme and has opined that the works have been executed as per the guidelines issued under NAREGA Scheme. He has further reported that, only the work of earth excavation has been executed through JCB and remaining works have been executed through labourers and they have been paid wages. The Investigating Officer has opined that the complainant has given false complaint and the same may be closed.
13. The Investigating Officer has produced documents like copies of completion report, commencement letter, estimate, Form 6 and 9, Mustroll details, Muster Rolls, material list, work allotment sheets, quotation for supply of material,

photographs and measurement books relating to the following 4 works which have been scrutinized and following discrepancies have been noticed:

1. ಮೇದರಹಳ್ಳಿ ಗ್ರಾಮದಿಂದ ಕೆರೆಗೆ ನೀರು ಕಾಲುವೆ ನಿರ್ಮಾಣ

- a) The commencement letter is dt.3/8/13. As per completion report the estimated cost is Rs.2 lakhs and total expenditure is Rs.1,99,136/-. The date of commencement and the date of completion are entered as 11/9/13 and 18/9/13. In condition 4, it is stipulated that no machinery shall be used and if necessary there shall be a provision for the same in the original estimate. Even in the estimate there is no specific provision for execution of any portion of the work through machineries. In Form 6 and Form 9, the names of the complainant Muniya Bhovi and his wife Chandramma with job card No.28748 are found. Therefore they make out that the complainant and his wife had applied for work as per Form 6 and they were notified to attend work as per Form 9. In Mustroll details for the period from 11/9/13 to 18/9/13, the names of complainant and his wife are found at Sl.No.64 and 65 and they have been paid Rs.1,392/- each at the rate of Rs.174/- per day. There are signatures of the complainant and his wife at the last column. Even in the work allotment sheet and Muster Roll, the names and signature of the complainant and his wife are found.
- b) Page 52 and 53 of measurement book has been produced. M.B.number is not forthcoming. Date of commencement, date of completion and date of recording have not been mentioned. From comparison of the measurements as entered in M.B. with that specified in estimate, it is noticed that they are totally different. The total amount towards supply bill is shown as Rs.1,16,593/-. Other bill details have not been mentioned. It is signed by the Unit Engineer, Panchayath Raj Engineering Sub-Division, Panchayath Development Officer and the President of Gram Panchayath.

2. ಮೇದರಹಳ್ಳಿ ಗ್ರಾಮದಲ್ಲಿ ನೀರು ಕಾಲುವೆ ನಿರ್ಮಾಣ

- a) As per the completion report the estimated cost is Rs.1,50,000/- lakhs. Total expenditure is Rs.1,32,530/-. The date of commencement and date of completion are entered as 31/10/13 and 10/12/13. But commencement letter (ಕಾಮಗಾರಿ ಪ್ರಾರಂಭ ಪತ್ರ) is dt.5/XI/13. Even in commencement letter in condition 4, it is specifically provided that there is no scope for use of machineries and if necessary provision shall be made in the original estimate. In the report accompanying the estimate, it is recited that as per action plan, the work is to be carried out under NAREGA for 2013-14 providing for excavation of earth, plain cement concrete footing, and TMT bar reinforcement. In the next page labour amount for jungle clearance and earth work excavation have been specified as 114 and 7072. Therefore, nowhere in estimate any specific provision has been made for use of machinery i.e., JCB.
- b) In Form 6 which is signed by Chandra Shetty as the first applicant, the names of complainant or his wife or the job card number of the complainant are not found. The total number of work days required is shown as 6 days. In the work allotment sheet and Muster Roll for the period from 10/12/13 to 16/12/13 also, the names of the complainant and his family members are not found. But in another Form 6 and Form 9, the names of the complainant and his wife with job card number 28748 are found at Sl.No.29 and 30. In the corresponding Muster Roll details at Sl.No.29 and 30, the name of the complainant and his wife are found with signatures at the last column.
- c) In page 68 and 69 of M.B, the name of the work is mentioned as 'ಮೇದರಹಳ್ಳಿ ಗ್ರಾಮದಲ್ಲಿ ಚರಂಡಿ ನಿರ್ಮಾಣ'. It is written as II and final bill. In item No.1 and 2, measurements regarding jungle clearance for medium and dense shrub and earth work excavation have been recorded. There is no any mention of use of machinery for the said purpose. The

measurements recorded in M.B. are totally different from that specified in estimate. In page 63 and 64, the details of first and part bill have been recorded. Even in the said pages there is no mention of date of commencement, date of completion or the date of recording. The measurements of item No.1 and 2, regarding jungle clearance for medium and dense shrub and earth work excavation have been recorded. There is no mention of use of machinery like JCB.

- d) Total amount for item No.1 to 5 has been mentioned as Rs.38,820/-. Total supply bill amount is mentioned as Rs.17,766/-. Number of mandays which was written as 120 has been struck off and written as 185. The bill is stated to have been passed for Rs.21,054/-. There are signatures of PDO and the President of Gram Panchayath. The date of commencement, completion or the date of recording have not been mentioned.
- e) In page 63 and 64 of M.B, grand total amount of item No.1 to 5 is shown as Rs.1,00,422/-. Total supply bill amount is shown as Rs.49,357/-. Total number of mandays is shown as 293. It is written that bill has been passed for Rs.1,00,422/-. There are signatures of Technical Assistant, Engineer, PDO and the President of Gram Panchayath.

3. ಕಟ್ಟಿತಿಮ್ಮನಹಳ್ಳಿ ಗ್ರಾಮದ ಊರ ಒಳಗಿನಿಂದ ಕಟ್ಟಿತಿಮ್ಮನಹಳ್ಳಿ ಬಾವಿಯವರೆಗೆ ನೀರು ಕಾಲುವೆ ನಿರ್ಮಾಣ:-

- a) Copies of commencement letter, Form 9 (notices to attend work), work allotment sheets, Mustroll details, Muster Rolls, for the periods from 23/11/11 to 30/11/11, 2/12/11 to 9/12/11, 4/1/12 to 11/1/12 and 24/12/11 to 31/12/11, financial advices for Rs.39,375/-, Rs.32,500/- have been produced.
- b) Commencement letter is dt.15/11/11. In condition 4, it is specifically provided that the machineries shall not be used/if necessary there shall be a provision in original estimate. Four numbers of Form 9 i.e., notices to attend

work have been produced. There are names of different labourers with their job card numbers. However the name of the complainant or his family members cannot be found. Form 6 i.e., applications for work submitted by the labourers have not been produced. In Mustroll details the measurements have been stated to be recorded in M.B.No.378 at page No.77, 11, 93 and 90. In the said document at the last column there are signatures and L.T.Ms. The L.T.Ms have not been attested or identified. The columns regarding wage list number and account credited date have been left blank. In page No.38 and 51 at Sl.No.28 and 29 and Sl.No.1 to 4 there are no signatures/LTM of the labourers.

- c) The financial advice for Rs.39,375/- and Rs.32,500/- only have been produced. The other two financial advices have not been produced. In the Muster Roll for the period from 4/1/12 to 11/1/12 neither the total amount nor the cheque numbers have been mentioned. In the Muster Roll from 24/12/11 to 31/12/11, the cheque number has not been mentioned.
- d) Completion report, M.B.books, Form 6 and photos have not been produced. There are differences between Muster Roll and financial advices regarding the actual period of work. No document has been produced to show the actual date of commencement and completion of work.

4. ಮೇದರಹಳ್ಳಿ ಸರ್ಕಾರಿ ಹಿರಿಯ ಪ್ರಾಥಮಿಕ ಶಾಲೆಗೆ ರಕ್ಷಣಾ ಗೋಡೆ ನಿರ್ಮಾಣ :-

- a) Commencement letter is dt.21/11/11. Total estimated cost is Rs.5 lakhs, wage amount is Rs.3 lakhs and material cost is Rs.2 lakhs. At Sl.No.4 it is specifically provided that machineries shall not be used/if necessary the provision shall be made in original estimate. In Sl.No.7 it is provided that the concerned implementing department shall verify periodically and record check measurement. In none of the Form 6 and 9, except Form 9 at page 105 of Investigation Report, the name of the complainant or his wife finds

place. In page 82 105, 130, and 131, which are Forms 9, the names of Chandramma, Jyothi, Muniya Bhovi, Halappa and Hemavathi with job card No.28748 have been mentioned. The work allotment sheets, Mustroll details and Muster Roll for the periods from 13/12/11 to 20/12/11, 24/12/11 to 31/12/11, 3/1/12 to 10/1/12, 21/3/12 to 28/3/12, 12/3/12 to 19/3/12, 31/7/13 to 3/8/13, have been produced. In Muster Roll for the period from 31/7.13 to 3/8/13 at Sl.No.27 and 28, the names of complainant and his wife are found. The signatures found at the last column are not legible. The said Muster Roll bears the signatures of only the President, Gram Panchayathi, Chikmagalur i.e., Smt.Vanajakshamma and Smt.K.C.Kavitha who has taken attendance. Financial advice for the said period has not been produced.

- b) In the Muster Roll for the period from 21/3/12 to 28/3/12, in Sl.No.51 to 55 the names of complainant, Chandramma, Halappa, Hemavathi, Kantharaju and Jyothi with job card No.228748 are mentioned. In Mustroll details at page No.116 the names of the above persons are found at Sl.No.1 to 6. The signatures are found in the last column but are not clearly visible. The columns relating to wage list number, status and account credited date have been left blank. In page No.120 of Mustroll detail, the signatures of Huligowda, President, Gram Panchayath and P.D.O, Gram Panchayath are found along with the signature of Smt.K.C.Kavitha. The total amount paid in cash is shown as Rs.52,125/-, but in the financial advice for the said period, the amount is mentioned as Rs.58,625/- with cheque No.554846. In the annexed list of labourers with bank details, the names and amounts have been over written. The said financial advice with list of labourers is dt.11/6/12. It bears the seal of Canara Bank, Kalasapura with date 15/6/12. Again for the same period i.e., 21/3/12 to 28/3/12, another financial advice dt.13/6/12 for Rs.52,125/- without mentioning the cheque number has been produced. In the annexed list of

labourers and bank account details also the cheque number is not mentioned. The names and account number have been over written. It also bears the seal of Canara Bank with date 15/6/12. Therefore, two financial advices for different amounts for the same period have been issued and passed by the Bank.

- c) Even in the Muster Roll for the period from 12/3/12 to 19/3/12, there are LTMs and signatures which are not legible and LTMs have not been identified. The Mustroll details of wage list number, status and account credited date have been left blank. Names of the complainant and his family members are not found. The total amount is shown as Rs.58,625/-. The cheque number has not been mentioned in the Mustroll details.
- d) In the work allotment sheet for the period from 3/1/12 to 10/1/12, the name of the complainant and his family members with job card number 28748 are not found. It does not bear the signatures of PDO or the President of Gram Panchayath. But in the Muster Roll for the said period at Sl.No.29 to 34, the names of Muniya Bhovi, Chandramma, Halappa, Hemavathi, Kantharaju and Jyothi are found with job card No.28748. The said Mustroll details is signed by the President and the PDO. The total amount is shown as Rs.55,375/-.
- e) In Mustroll details for the above period at Sl.No.1 to 6, the above names are found, but details of wage list number, status and amount credited date have not been mentioned. Even with respect to other names where LTMs are found, they have not been properly identified. Some signatures and LTMs are not clearly visible.
- f) For the period from 24/12/11 to 31/12/11, in Muster Roll only M.B.number has been mentioned but page number has been left blank. Again LTMs have not been identified. The amount shown as paid with respect to Sl.No.32, 33, 37, 38 have been over written. Some of the signatures are found over written. There is no signature of the labourer at

Sl.No.58. It is signed by PDO, the President of Gram Panchayath and Smt.Kavitha K.C. The date of commencement has also been left blank. In the work allotment sheet for the above period there is no signature of the President. In page No.58 of the report, in Form 6 dt.2/1/11, job card number is mentioned as 28748 for Sl.No.29 to 34, but different names are found. For the period from 13/12/11 to 20/12/11, Muster Roll has been produced. In Sl.No.17, 24, 26, 28, 31, 33, 38, 41, 42, 46, 47, 49, and 51, illegible LTMs and over the same, signatures are found. The total amount paid is over written in page 3 to 5.

g) In Mustroll details for the above period, the columns regarding wage list number and account credited date have been left blank. Even in the said document, there are LTMs over the signatures. In Form 9 dt.24/12/11, there is no name of the complainant or his family members.

14. Therefore from the scrutiny of the above documents, following discrepancies/irregularities are noticed in execution of the above works under NAREGA Scheme.

- a) In M.B, date of commencement, date of completion and date of recording have not been entered.
- b) It is categorically admitted that the work has been executed with the help of the machinery viz., JCB, even though no provision was made in the estimate. There is no mention of use of JCB for earth excavation even in M.B.
- c) The measurements as entered in M.B vary with that specified in estimate.
- d) The L.T.M/signatures of the workers in the documents as discussed above are not legible. In some documents they are overwritten which create doubt about providing employment to the workers whose names find place in those documents viz., Form 6, Form 9, Mustroll details and Muster Roll.

- e) There are alterations in the actual wage amount paid to the workers. There are discrepancies in cheque numbers, bank account details, financial advices etc., as discussed above.
- f) The documents are incomplete. Therefore it can be made out that the documents have not been properly maintained as contemplated under MGNAREGA Act and Rules.
15. Therefore, there are sufficient materials to opine that the allegations of the complainant that work has been executed with the help of JCB and that there are discrepancies and irregularities in execution of works under MGNREGA is substantiated:
16. The 2nd respondent was the Executive Officer of Taluk Panchayath at the time of execution of all the above 4 works. The 4th respondent was the PDO who has executed 1st and 2nd work. The 5th and 6th respondents were the PDOs who have executed 3rd and 4th works. The 7th respondent was the A.E.E, who was responsible for the execution of all the 4 works. The 15th respondent was the official of Gram Panchayath who has affixed her signatures to the documents for having taken attendance of the workers. The 9th respondent as J.E./Technical Assistant has executed the 3rd and 4th work. 11th respondent was the Engineer pertaining to 1st work. 16th respondent was the Technical Assistant of 1st and 2nd work. 12th respondent was the President during the execution of 1st and 2nd work. The 13th respondent was the President at the time of execution of 3rd work. The 13th and 14th respondents were the Presidents of Gram Panchayath during the execution of 4th work. Among them 6th respondent is dead. As per the entry made in the face sheet dt.31/5/2014, 16th respondent has been appointed on contract basis. The 15th respondent has been appointed by the Gram Panchayath which has been approved by Zilla Panchayath. The 12th to 14th respondents were the elected representatives of Gram Panchayath, during the relevant period.

17. The 2nd, 4th, 5th, 7th, 9th and 11th respondents are the public servants as per Sec.2(12) of K.L.Act. From the above discrepancies in execution of work it can be opined that there is dereliction of duty and lack of absolute integrity in discharge of their duties as public servants. Hence, the 2nd, 4th, 5th, 7th, 9th and 11th respondents are liable for disciplinary action as per Rule 3 of K.C.S. (Conduct) Rules, 1966.
18. However, the works in question have been executed during 2011 to 2013. The date of retirement of 2nd respondent is 31/3/2016. As per the decisions of Hon'ble Supreme Court in Brajendra Singh Yambem V/s Union of India and another reported in (2016) 9 SCC 20 and State of U.P and another V/s Sri.Krishna Pande reported in (1996) 9 SCC 395, and the decisions of the Hon'ble High Court of Karnataka in State of Karnataka Vs/ Sri.V.H.Agarkhed and another reported in ILR 2017 KAR 3473, State of Karnataka V/s.Sangappa B Derad and another in RFA No.200057/2016 and State of Karnataka V/s.Sudhakar Kulkarni and another in RFA No.200040/2016, after lapse of 4 years from the date of event disciplinary proceedings cannot be initiated against a retired Government servant in view of bar under Sec.214 of K.C.S.R. Therefore, the disciplinary proceedings cannot be initiated against the 2nd respondent but other action can be initiated as per NAREGA Act and Rules and Karnataka Panchayath Raj Act.
19. Therefore, acting under Section 12(3) of Karnataka Lokayukta Act, 1984, recommendation is made to the Competent Authority for initiating disciplinary proceedings against 4th respondent Sri.M.Rajappa, the then Panchayath Development Officer, Eshwarahalli Gram Panchayath, Chikmagalur Taluk, 5th respondent Sri.S.K.Paramesh, the then Panchayath Development Officer, Eshwarahalli Gram Panchayath, Chikmagalur Taluk, 7th respondent Sri.R.Thimmegowda, I/c.Assistant Executive Engineer, Panchayath Raj Engineering Sub-Division, Chikmagalur, 9th respondent Sri.S.V.Divakar,

the then Junior Engineer, Taluk Panchayath, Chikmagalur, and 11th respondent Sri.S.Anilkumar, the then Junior Engineer, Taluk Panchayath, Chikmagalur, and to entrust the departmental inquiry to this authority under Rule 14-A of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957.

20. As per section 12(4) of the Karnataka Lokayukta Act, 1984, the Competent Authority shall intimate or caused to be intimated to this Authority, the action taken or proposed to be taken on this recommendation, within a period of three months from the date of receipt of this report.

Connected records are enclosed herewith.

B.S. Patil 29-6-20
(Justice B.S.Patil)

Upalokayukta,

State of Karnataka, Bengaluru

Done
26/6/2020