

KARNATAKA LOKAYUKTA

No. Compt/Uplok/MYS-5561/2012/ARE-6

M.S. Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru.

Date: 27/03/2019.

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

Sub: Proceedings against Sri. Sachin – PDO, Kunjila Gram Panchayath, Kakkabe, Madikeri Taluk 2) President Smt. Shaila Kuttappa, 3) Vice President Sri. Y.A.Usman, and Members 4) Sri. Kudiyara Bojaki , 5) Sri. Billaara Pushpa, 6) Smt. Badakada Praveena, 7) Sri. M.A.Ramesh, 8) Sri. A.N.Poonacha, 9) Sri. Payyadi Moose, 10) Sri. Kundananda Razak, 11) Sri. Nasir Mukki, 12) Sri. K.A.Veena, 13) Smt. Janaki Madura and 14) Sri. K.Ameena of Kunjila Gram Panchayath, Madikeri Taluk - about their misconduct as Public/Government servants – reg.

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Upon the complaint given by Sri. K.P.Somanna – Thapovana, Yavakapadi Village and Post, Via Cheyandanne BO, Madiekri Taluk in Kodagu District (hereinafter referred to as 'complainant' for short) against Sri. M.A.Shookath Ali- the then President, Kunjila Gram Panchayath, 2) Sri. S.A.Krishanppa- PDO, Kunjila Gram



Panchayath, 3) Smt. Devaki- Secretary and 4) Tahasildar being Public/Government Servants have committed misconduct, an investigation has been taken up u/s 9 of the Karnataka Lokayukta Act, 1984.

2. During the course of investigation, we have received reply dated 25/10/2017. We have received reply from the complainant along with the copy of resolution dated 23/06/2018 passed by Kunjila Gram Panchayath. After perusal of the said resolution and having regard to the fact that the investigation was going on with regard to clearing the obstruction in respect of public road and water canals, the PDO, President, Vice President, the members of Gram Panchayath , referred to above were asked to submit their explanation with regard to passing resolution against to law. It was made clear in the notice that, the said resolution is against to the judgement reported in ILR 2002 KAR 3633, wherein the Hon'ble High Court of Karnataka held as follows:

“Any land reserved for road and that too when it is shown in the village map, the same cannot be diverted for any other use without changing the purpose for which it is reserved”.

3. In response to the notices issued the said, Sri. Sachin – PDO, Kunjila Gram Panchayath, Kakkabe, Madikeri Taluk 2) President Smt. Shaila Kuttappa, 3) Vice President Sri.

Y.A.Usman, and Members 4) Sri. Kudiyara Bojaki , 5) Sri. Billaara Pushpa, 6) Smt. Badakada Praveena, 7) Sri. M.A.Ramesh, 8) Sri. A.N.Poonacha, 9) Sri. Payyadi Moose, 10) Sri. Kundananda Razak, 11) Sri. Nasir Mukki, 12) Sri. K.A.Veena, 13) Smt. Janaki Madura and 14) Sri. K.Ameena of Kunjila Gram Panchayath, Madikeri Taluk(hereinafter referred to as respondents/opponents No.1 to 14 respectively) have submitted their explanation dated 11/01/2019 on perusal of the same, it is seen that, they have disputed the averment that they have passed illegal resolution for renewal of license in favour of Tamara Resort. It is also stated that they have not at all passed any illegal resolution. The resolution passed by them was in accordance with law and within their jurisdiction. The resort authorities have cleared the obstruction with regard to public road and free flow of water. Therefore, they have taken a unanimous decision to renew the license. According to them, the observations made by this institution in Para 150 are not correct.

4. The PDO Sri.Sachin has also submitted similar explanation. He also asserted that, the resolution dated 23/06/2018 was proper and there is no illegality committed by him and the Panchayath while passing the said resolution. Accordingly, prayed to close the compliant.



5. Thereafter, we have also received explanation from one 1) Sri. Kudiyara Bojaki, 2) Smt. Billavara Pushpa, 3) Smt. Badakada Praveena, 4) Sri. M.A.Ramesh and 5) Sri.A.N.Poonacha, the members of Kunjila Gram Panchayath. In their explanation they stated that, the PDO misguided them while passing the alleged resolution. The PDO had produced false and frivolous documents and made them to believe that they are genuine documents. In fact, the resort authorities have not at all cleared the obstruction regarding road and channel for free flow of water. The people of that locality have been facing lot of difficulties to reach their lands and houses. They had repeatedly raised objections in all the Panchayath meetings with regard to issuance of license in favour of the resort. But, by suppressing the real facts and by taking signatures, the PDO and President have passed illegal resolution. Therefore, they are not parties to the alleged resolution passed by the President and PDO. They stated that, they respect and honor the Judgement passed by the Hon'ble High Court of Karnataka reported in ILR 2002 Karnataka 3633.
6. The above said members have also produced copies of resolutions passed by the Panchayath on various dates.
7. It is pertinent to note that, the explanation dated 11/01/2019 shows the names of President, Vice President and 10 members. But, there is no signatures of all the members in

the said explanation. The PDO has separately submitted the explanation. Since, five members have submitted their explanation separately, the explanation signed by the President and Vice President by showing the names of other 10 members cannot be believed and accepted. The explanation submitted by 5 Gram Panchayath members would prima facie indicates that the President, Vice President and PDO might have colluded together along with the owner of the Tamara Resort to pass such an illegal resolution. When majority of the members raised their objection with regard to passing illegal resolution, the President, Vice President and PDO should not have passed such resolution.

8. It is pertinent to note that, the complainant has also submitted his rejoinder stating that the resolution dated 23/06/2018 is illegal and it was passed at the behest of the owner of Tamara resort. The President, Vice President and PDO have not submitted any document along with their explanation to show that obstruction over the public pathway and channel were cleared by the Tamara Resort. On the other hand, the photographs produced by the complainant would prima facie show that, the obstruction is still in existence and in fact, it has not been cleared. Most weaker section of the society including the tribal people are leaving in that area. But, the influential and financially sound persons have established resort by encroaching the public pathway and



channel and thereby prevented the people of that locality from making use of that public way. The responsible Panchayath PDO, President and other members of the Panchayath have failed to discharge their duties in accordance with law and on the other hand at the behest of owner of that resort, they had taken a decision to pass a resolution dated 23/06/2018 and thereby ordered to renew the license in favour of that resort. The very explanation offered by 5 members of the Panchayath would prima facie indicates that, the President, Vice President and PDO must have played vital role while passing the illegal resolution.

9. But, having regard to the facts and circumstances particularly with regard to passing resolution by the Panchayath against to the actualities, law and the Judgement of Hon'ble High Court of Karnataka, the explanation submitted by PDO Sri. Sachin, President, Vice President and Members of Kunjila Gram panchayath cannot be accepted. The 5 members of Gram Panchayath cannot plead their ignorance about the resolution. When they are the public servants, being members of Gram Panchayath, they should be in a position to understand the resolution and actualities before putting their signatures. There is a prima facie material to come to a conclusion that, without taking steps to clear the encroachment made by Tamara Resort owner with regard to pubic pathway and water canal, they have passed an illegal resolution against to law

and at the behest of the owner of Tamara Resort and thereby taken a decision to renew the license to run the resort. The act on the part of the above said official and public servants amounts to misconduct and dereliction of official duty within the meaning of Rule 3(1)(i)(ii)(iii) of KCS(Conduct) Rules 1966 in respect of PDO and Sec.43A of Karnataka Panchayath Raj Act in respect of President, Vice President and other members of the Panchayath.

10. Since said facts supported by the material on record prima facie shows that the respondents/opponents being Public/Government servants, have committed misconduct as per Rule 3(1)(i)(ii)& (iii) of KCS(Conduct) Rules 1966 and Sec.43A of Karnataka Panchayath Raj Act, now, acting under section 12(3) of the Karnataka Lokayukta Act, recommendation is made to the Competent Authority to initiate disciplinary proceeding against the respondent No.1 Sri. Sachin and to take action as per Sec.43A of Karnataka Panchayath Raj Act against respondent Nos.2 to 14, and to entrust the inquiry against respondent No.1 to this authority under Rule 14(A) of Karnataka Civil Services(Classification, Control and Appeal) Rules 1957.
11. Further, as per U/s 12(4) of Karnataka Lokayukta Act, 1984, the Competent Authority is required to intimate this Authority as early as possible but latest within three



months from the date of receipt of this report, the action taken or proposed to be taken on this report against respondent Nos.1 to 14.

Connected records are enclosed.

N. Ananda
(JUSTICE N.ANANDA) 28/3.
I/c UPALOKAYUKTA-2
STATE OF KARNATAKA