

KARNATAKA LOKAYUKTA

No.LOK/DE/318/2015/ARE-13

M.S. Building,
Dr. B.R. Ambedkar Road,
Bangalore-560 001,
Date: 18-10-2021.**:: ENQUIRY REPORT ::**

- Sub:-** Departmental Inquiry against
- 1) Sri. N.S. Revanna, Assistant Engineer, BBMP, Bengaluru.
 - 2) Sri.B.R. Obaiah, Assistant Engineer, BBMP, Bengaluru.
 - 3) Sri. M.J. Kumar, Assistant Engineer, BBMP, Bengaluru.
 - 4) Sri. Pradeep Kumar, Assistant Engineer, BBMP, Bengaluru.
 - 5) Sri. Channaveeraiah, Assistant Engineer, BBMP, Bengaluru.
 - 6) Sri. K.M. Yadhukrishna, Assistant Engineer, BBMP, Bengaluru.
 - 7) Sri. K.B. Narasimha Murthy, Assistant Engineer, BBMP, Bengaluru.
 - 8) Sri. R. Gangadhar, Assistant Executive Engineer, BBMP, Bengaluru - reg.

Ref :- 1) Govt. Order No. ನಅಇ 312 ಎಂಎನ್‌ಯು 2015,
ಬೆಂಗಳೂರು, dated: 12/06/2015.

2) Nomination Order No.LOK/DE/318/2015,
Bengaluru, dated: 17/06/2015.

The Departmental Enquiry is initiated against Delinquent Government Officials 1) Sri. N.S. Revanna, Assistant Engineer,

BBMP, Bengaluru, 2) Sri. B.R. Obaiah, Assistant Engineer, BBMP, Bengaluru 3) Sri. M.J. Kumar, Assistant Engineer, BBMP, Bengaluru 4) Sri. Pradeep Kumar, Assistant Engineer, BBMP, Bengaluru 5) Sri. Channaveeraiah, Assistant Engineer, BBMP, Bengaluru 6) Sri. K.M. Yadhukrishna, Assistant Engineer, BBMP, Bengaluru 7) Sri. K.B. Narasimha Murthy, Assistant Engineer, BBMP, Bengaluru 8) Sri. R. Gangadhar, Assistant Executive Engineer, BBMP, Bengaluru (*hereinafter referred as D.G.Os for short*).

2) In view of Government Order cited at reference No-1, the Hon'ble Lokayukta vide Order cited at reference No-2, has nominated Additional Registrar (Enquiries-7) to frame Articles of Charge and to conduct Enquiry against aforesaid D.G.Os No-1 to 8.

3) The Complainant Sri. Anil Kumar S/o Shivappa, No.625, Kaveri Nagar, Vidhana Soudha Layout, Laggere, Bengaluru has lodged complaint before this Institution alleging that one Smt. Lakshamma W/o Late Hanumanarasaiah, Owner of Site Nos.4 and 11 of Kottigepalaya, Uttarahalli, Bengaluru has put up unauthorized construction without getting sanctioned plan or without permission of concerned authorities. In spite of representations, the DGOs have not taken action. Therefore, he has prayed to take appropriate action against them.

4) Hon'ble Lokayukta on perusal of material on record found prima-facie case against D.G.O Nos-1 to 8 and hence a Report

dt:05/03/2015 u/s. 12(3) of Karnataka Lokayukta Act, 1984, was sent to Government to initiate disciplinary proceedings against D.G.O Nos-1 to 8. The Competent Authority by Order dt:12/06/2015 entrusted the matter to Hon'ble Lokayukta. In turn, Hon'ble Lokayukta has nominated ARE-7 as Enquiry Officer.

5) As per Order of Hon'ble Uplok-1 & 2/DE/Transfers/2018 of Registrar, Karnataka Lokayukta dated : 06/08/2018 this Enquiry file was transferred from ARE-7 to ARE-13.

6) In pursuance of the Nomination Order, Articles of Charge with Statement of Imputations of Misconduct, List of Witnesses and Documents were prepared and served upon the D.G.O Nos-1 to 8.

7) The Articles of Charge framed by this A.R.E is as follows :

That you-DGO Nos. 1) Sri. N.S. Revanna, Assistant Engineer, BBMP, Bengaluru, 2) Sri. B.R. Obaiiah, Assistant Engineer, BBMP, Bengaluru, 3) Sri. M.J. Kumar, Assistant Engineer, BBMP, Bengaluru, 4) Sri. Pradeep Kumar, Assistant Engineer, BBMP, Bengaluru, 5) Sri. Channaveeraiah, Assistant Engineer, BBMP, Bengaluru, 6) Sri. K.M. Yadhukrishna, Assistant Engineer, BBMP, Bengaluru, 7) Sri. K.B. Narasimha Murthy, Assistant Engineer, BBMP, Bengaluru, 8) Sri. R. Gangadhar, Assistant Executive Engineer, BBMP, Bengaluru while discharging your duties:

You-DGO Nos-1 to 8 are responsible for allowing the unauthorized construction up to 3rd floor at site No.4 and 11, Malagala Main Road, Ward No.73, Kottigepalya, Laggere Sub Division, Bengaluru and for not taking action against the unauthorized building.

and thereby you failed to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of Government Servants and thus you are guilty of Misconduct under Rule 3(1) (i) to (iii) of Karnataka Civil Service(Conduct) Rules 1966.

8) The Statement of Imputations of Misconduct as framed by this ARE is as follows :

An Investigation was taken up u/s 9 of Karnataka Lokayukta Act 1984, on the complaint filed by Sri. Anil Kumar S/o Shivappa, No.625, Kaveri Nagar, Vidhana Soudha Layout, Laggere, Bengaluru (*hereinafter referred to as complainant for short*), against 1) Sri. N.S. Revanna, Assistant Engineer, BBMP, Bengaluru, 2) Sri.B.R. Obaiah, Assistant Engineer, BBMP, Bengaluru, 3) Sri. M.J. Kumar, Assistant Engineer, BBMP, Bengaluru, 4) Sri. Pradeep Kumar, Assistant Engineer, BBMP, Bengaluru, 5) Sri. Channaveeraiah, Assistant Engineer, BBMP, Bengaluru, 6) Sri. K.M. Yadhukrishna, Assistant Engineer, BBMP, Bengaluru, 7) Sri. K.B. Narasimha Murthy, Assistant Engineer, BBMP, Bengaluru, 8) Sri. R. Gangadhar,

Assistant Executive Engineer, BBMP, Bengaluru, have committed Misconduct.

9) According to the Complainant: In Site No.4 and 11 of Kottigepalya, Uttarahalli, Bengaluru unauthorized sites have been formed and construction is being made without getting sanctioned plan and without permission. In spite of representations and requests, the DGOs have not taken any action.

10) Thereafter, the complaint was referred to the Chief Engineer, TAC, Karnataka Lokayukta for investigation and report. The Chief Engineer had entrusted the investigation to Sri.K. Srinivas, A.E.E-1, TAC, KLA, Bengaluru. After investigation, he had submitted his report, stating that DGOs are to be held responsible for allowing the unauthorized construction upto 3rd floor at Site Nos-4 and 11, Malagala Main Road, Ward No.73, Kottigepalya, Laggere Sub-Division, Bengaluru and for not taking action against the unauthorized building.

11) Thereafter, comments/objections have been called for from all the DGOs on the said report. The DGOs have not submitted their replies in spite of sufficient opportunity given. Hence, it is taken that they have nothing to say in the matter.

12) The notices issued to D.G.O Nos-1 to 8 were duly served and had appeared before Enquiry Officer. Their First Oral Statements

were recorded. The D.G.O. Nos-1 to 8 denied the charges and claimed to be enquired. The DGO No-1 Sri. N.S. Revanna has stated in his First Oral Statement dated: 05/08/2015 that he is serving as Assistant Engineer, BBMP, Bengaluru and his date of retirement is 31/05/2024.

The DGO No-2 Sri. B.R. Obaiah has stated in his First Oral Statement dated: 28/12/2015 that he is serving as Assistant Engineer, BBMP, Bengaluru and his date of retirement is 31/03/2025.

The DGO No-3 Sri. M.J. Kumar has stated in his First Oral Statement dated: 28/12/2015 that he is serving as Assistant Engineer, BBMP, Bengaluru and his date of retirement is 31/07/2023.

The DGO No-4 Sri. Pradeep Kumar has stated in his First Oral Statement dated: 05/08/2015 that he is serving as Assistant Engineer, BBMP, Bengaluru and his date of retirement is 30/08/2045.

The DGO No-5 Sri. Channaveeriah has stated in his First Oral Statement dated: 05/08/2015 that he is serving as Assistant Engineer, BBMP, Bengaluru and his date of retirement is 31/07/2023.

The DGO No-6 Sri. K.M. Yadhukrishna has stated in his First Oral Statement dated: 05/08/2015 that he is serving as Assistant

Engineer, BBMP, Bengaluru and his date of retirement is 30/04/2025.

The DGO No-7 Sri. K.B. Narasimha Murthy has stated in his First Oral Statement dated: 28/12/2015 that he is serving as Assistant Engineer, BBMP, Bengaluru and his date of retirement is 31/03/2025.

The DGO No-8 Sri. R. Gangadhar has stated in his First Oral Statement dated: 05/08/2015 that he is serving as Assistant Executive Engineer, BBMP, Bengaluru and his date of retirement is 30/08/2034.

13) i) The D.G.O No-1 Sri. N.S. Revanna has filed Written Statement stating that during his tenure i.e 5/5/2011 to 29/02/2012 there were no complaints either by the complainant or any other person with regard to mentioning Articles of charge. It is clear from records that khata was transferred in the name of Smt. Lakshamma only on 28/9/2012 and therefore there is no question of any form of construction during his tenure denying the allegations. He has denied all the allegations and has stated that he has not committed any misconduct and therefore prays to discharge him from all the charges.

ii) The D.G.O No-2 Sri. Obaiah has filed Written Statement stating that during his tenure i.e 02/12/2011 to 5/3/2012 there were no

complaints either by the complainant or any other person with regard to mentioning Articles of charge. It is clear from records that khata was transferred in the name of Smt. Lakshamma only on 28/9/2012 and therefore there is no question of any form of construction during his tenure denying the allegations. He has denied all the allegations and has stated that he has not committed any misconduct and therefore prays to discharge him from all the charges.

iii) The D.G.O No-3 Sri. M.J. Kumar has filed Written Statement stating that during his tenure i.e 05/3/2012 to 02/5/2012 there were no complaints either by the complainant or any other person with regard to mentioning Articles of charge. It is clear from records that khata was transferred in the name of Smt. Lakshamma only on 28/9/2012 and therefore there is no question of any form of construction during his tenure denying the allegations. He has denied all the allegations and has stated that he has not committed any misconduct and therefore prays to discharge him from all the charges.

iv) The D.G.O No-4 Sri. Pradeep kumar R has filed Written Statement stating that during his tenure i.e 30/5/2012 to 31/10/2012 there were no complaints either by the complainant or any other person with regard to mentioning Articles of charge. It is clear from records that khata was transferred in the name of Smt. Lakshamma only on 28/9/2012 and therefore there is no question

of any form of construction during his tenure denying the allegations. He has denied all the allegations and has stated that he has not committed any misconduct and therefore prays to discharge him from all the charges.

v) The D.G.O No-5 Sri. Chennaveeriah has filed Written Statement stating that during his tenure i.e 1/11/2012 to 20/1/2013 and again from 13/6/2013 till 6/11/2013 there were no complaints either by the complainant or any other person with regard to mentioning Articles of charge. It is clear from records that khata was transferred in the name of Smt. Lakshamma only on 28/9/2012 and therefore there is no question of any form of construction during his tenure denying the allegations. He has denied all the allegations and has stated that he has not committed any misconduct and therefore prays to discharge him from all the charges.

vi) The D.G.O No-6 Sri. K.M. Yadhukrishna has filed Written Statement stating that during his tenure i.e 21/1/2013 to 12/6/2013 there were no complaints either by the complainant or any other person with regard to mentioning Articles of charge. It is clear from records that khata was transferred in the name of Smt. Lakshamma only on 28/9/2012 and therefore there is no question of any form of construction during his tenure denying the allegations. He has denied all the allegations and has stated that he

has not committed any misconduct and therefore prays to discharge him from all the charges.

vii) The D.G.O No-7 Sri. K.V. Narasimhamurthy and DGO No-8 Sri. Gangadhar have filed separate Written Statements stating that Karnataka Lokayukta do not have jurisdiction to proceed against them and the nomination order is illegal and improper. The Departmental Rule does not empower holding joint enquiry. The material allegations against them are factually incorrect and they are not admitted. The complainant has suppressed material facts and has not approached this authority with clean hands. They have taken immediate action by issuing notices to the owner to stop construction and also recommended for demolishing the illegal structure. They have denied all other allegations and have stated that they have not committed any misconduct and therefore prays to discharge them from all the charges.

14) The Disciplinary Authority has examined the Investigation Officer/Sri. K. Srinivas as P.W-1 and the complainant/Sri. Anil Kumar as P.W-2 and got marked 17 documents as Exs. P1 to P17.

15) The D.G.Os. examined one witness namely Sri. H.N. Murthy as D.W.1. Three documents were marked as Ex.D-1 to D-3.

16) Heard both sides and perused the written arguments and material on record.

17) Under the above circumstances, the points that arise for consideration are as follows:

(i) Whether the Disciplinary Authority proves that DGO Nos-1 to 8 are responsible for allowing the unauthorized construction up to 3rd floor at Site Nos-4 and 11, Malagala Main Road, Ward No.73, Kottigepalya, Laggere Sub Division, Bengaluru and for not taking action against the unauthorized building has committed misconduct, dereliction of duty, acted in a manner unbecoming of a Government Servant and not maintained absolute integrity violating R.3(1)(i) to (iii) of K.C.S. (Conduct) Rules, 1966?

(ii) What Finding?

18) My findings to the above points are :

i) Partly in the Affirmative.

ii) As per finding,

REASONS

19) **Point No.1:-** This is a case of unauthorized construction put up by one Smt. Lakshamma W/o late Hanumanarasaiah in Site Nos-4 and 11 of Kottigepalya, Malagala Main Road, opposite SBI

Building in Ward No.73 of BBMP, measuring in 30x80 feet. She did not get any sanctioned plan from competent authority and more over plan for the same could not have been sanctioned since the owner of the plots/sites held only 'B' khata. DGOs had not taken any action in respect of the unauthorized construction.

20) The complainant Sri. Anil Kumar was examined as PW-2. He has given evidence about the unauthorized construction in the above site numbers and that the owner had not obtained prior sanction plan. It is his case that inspite of representations given to the BBMP authorities, they have not taken any action and therefore he lodged complaint before Karnataka Lokayukta. Ex.P-11 and P-12 are the Form No-I and II submitted by the complainant. Ex.P-13 is the copy of Sale Deed dated: 03/09/2010 under which Smt. Lakshamma W/o late Hanumanarasaiah had purchased Site Nos-4 and 11, Malagala Village for valuable consideration from one Shankar Poojari. Ex.P-14 to 16 are the representations given by the complainant Sri. Anil Kumar to BBMP Officials complaining about the unauthorized construction and to remove the same.

21) The Title/Owner ship of Smt. Lakshamma over the aforesaid sites is not in dispute. The Son and Power of Attorney Holder of Smt. Lakshamma namely H.N. Murthy was examined by the DGOs as DW-1. In his cross examination he has admitted that his mother had purchased plots 4 and 11 under a Sale Deed for valuable consideration from Shankar Poojari. He has admitted that the said

sites/plots were not converted for residential purpose. The following admissions are made by DW-1/H.N. Murthy in the course of his cross examination:

“ ಅನುಮೋದಿತ ನಕಾಶೆ ಮತ್ತು ಬಿಲ್ಡಿಂಗ್ ಲೈಸೆನ್ಸ್ ಪಡೆಯದೆ ಲಕ್ಷ್ಮಮ್ಮ ಇವರು ಮನೆ ನಿರ್ಮಾಣ ಮಾಡುತ್ತಿದ್ದಾರೆ ಎಂದು ಆರೋಪಿಸಿ ಲೋಕಾಯುಕ್ತ ಸಂಸ್ಥೆಗೆ ದೂರು ಕೊಟ್ಟಿದ್ದರು ಎಂದರೆ ಸರಿ. ನಂತರ ಬಿ.ಬಿ.ಎಂ.ಪಿ ಯ ಸಂಬಂಧಪಟ್ಟ ವಾರ್ಡಿನ ಅಭಿಯಂತರರು ಮನೆ ಕಟ್ಟಡ ರಚನೆಯ ಕೆಲಸವನ್ನು ನಿಲ್ಲಿಸುವಂತೆ ಸೂಚಿಸಿ ನನ್ನ ತಾಯಿಗೆ ನೋಟೀಸ್ ನೀಡಿದ್ದರು ಎಂದರೆ ಸರಿ. ನೋಟೀಸ್ ನೀಡಿದ ನಂತರ ಕಟ್ಟಡ ರಚನೆಯ ಕೆಲಸವನ್ನು ನನ್ನ ತಾಯಿಯು ನಿಲ್ಲಿಸದೇ ಇದ್ದುದರಿಂದ ನಿ.ಪಿ-3 ರ ತಾತ್ಕಾಲಿಕ ಆದೇಶವನ್ನು ಕೆ.ಎಂ.ಸಿ ಕಾಯ್ದೆ ಕಲಂ 321(1)&(2) ರಡಿ ಆದೇಶ ಮಾಡಿದ್ದರು ಎಂದರೆ ಸರಿ. ನಂತರವೂ ಸಹ ಕಟ್ಟಡ ರಚನೆಯ ಕೆಲಸವನ್ನು ನನ್ನ ತಾಯಿಯು ನಿಲ್ಲಿಸದೇ ಇದ್ದುದರಿಂದ ನಿ.ಪಿ-4 ರ ಸ್ಥಿರೀಕರಣ ಆದೇಶವನ್ನು ಕೆ.ಎಂ.ಸಿ ಕಾಯ್ದೆ ಕಲಂ 321(3) ರಡಿ ಆದೇಶ ಮಾಡಿದ್ದರು ಅಂದರೆ ಸರಿ. ನಂತರ ದಿನಾಂಕ : 29/09/2014 ರಂದು ನಿ.ಪಿ-5 ರಂತೆ ಲಗ್ಗೆರೆ ಉಪ-ವಿಭಾಗದ ಎ.ಇ.ಇ ರವರು ನನ್ನ ತಾಯಿಗೆ ಕಟ್ಟಡ ತೆರವುಗೊಳಿಸಲು ನೋಟೀಸ್ ನೀಡಿದ್ದರು ಅಂದರೆ ಸರಿ”.

22) The aforesaid admissions made by DW-1 is suffice to hold that unauthorized construction was made in the above plots and at the later stage BBMP officials had issued notices to his Mother to stop the construction.

23) Evidence of PW-1/Sri. K. Srinivas, Assistant Executive Engineer, Technical Cell, Karnataka Lokayukta, Bengaluru also clinches the case of the Disciplinary Authority that unauthorized construction was made in the aforesaid plots without obtaining

sanctioned plan. The **COMPT/LOK/BCD/835/2014** was referred to the Technical Cell for investigation and report. PW-1/Sri. K. Srinivas had visited the spot 05/11/2014 and had issued Ex.P-3 to 5 notices to the complainant and concerned BBMP Engineers to be present near the spot. Ex.P-9 is the Spot Mahazar prepared at the spot and the process of inspection was also video graphed. Ex.P-8 is the C.D. The observations made in Ex.P-9/Mahazar clearly reflects that a building containing ground floor plus 3 upper floors were put up but the building was not finished. The witness has given evidence that he came to know from the local people after enquiry that the building was under construction from the past three years. The said aspect is also mentioned in Ex.P-9 Spot Mahazar.

24) Ex.P-10 comprises Further Scrutiny Notes from Para 25 to 30 in COMPT/LOK/BCD/835/2014. After visiting the spot and preparing Ex.P-9 Spot Mahazar, PW-1/Sri. K. Srinivas had made the following observations in Ex.P-10/scrutiny notes. For the sake of brevity, **paragraphs 27, 28 and 30** are extracted for better understanding.

“ 27) Accordingly, the spot inspection of the alleged building was taken up by me on 05/11/2014 in the presence of the complainant and concerned officers of BBMP. It was observed on the spot that a building containing ground floor + 3 upper floors has been

constructed at site No.4 and 11, Malagala Main Road, Kottigepalya in Ward No.73 of BBMP. The above building was found to be incomplete to the only structural portion and walls completed. The construction work has been stopped and no activity was observed on the spot. The concerned Assistant Executive Engineer and Assistant Engineer of BBMP present on the spot informed that no plan has been sanctioned for the above building and the same has to be considered as unauthorized. It was further informed by the Assistant Executive Engineer and Assistant Engineer that they took charge of the above area above 1½ year back and by that time, the alleged building had already been constructed. On enquiry with the local people, it was confirmed that the above building is under construction from the last 3 years.

28) As per the records produced by the BBMP officers, Provisional order notice (P.40 of C.S), confirmation order notice (P.37 of C.S) and notice under Sec.462 of K.M.C Act (P-127 of C.S) to demolish the unauthorized building has been issued to the owner of the building. Further, it is informed by the Assistant Executive Engineer, BBMP that the alleged site is having a 'B' khata and plan for construction of building in 'B' khata plots cannot be sanctioned as per the existing rules.

30) *Based on the facts explained above, it is observed that the present Assistant Executive Engineer and Assistant Engineer working in Laggere Sub-Division of BBMP have initiated action against the unauthorized construction by issuing notices as per KMC Act and there by stopping further construction of the building. They have also written letters to BWSSB and BESCO, not to give water supply, sanitary and electrical connection to the above building. However, the concerned Assistant Executive Engineer and Assistant Engineer who were incharge of the area since last 3 years are to be held responsible for allowing the unauthorized construction up to 3rd floor. The present Assistant Executive Engineer, BBMP, Laggere Sub-Division was informed to furnish the details of the Assistant Executive Engineer and Assistant Engineer responsible for not taking action against construction of the above unauthorized building. Accordingly, Assistant Executive Engineer, BBMP, Laggere Sub Division has submitted a list of Assistant Engineer/Assistant Executive Engineer's from 05/05/2011 to 05/11/2014 who were working in Laggere Sub Division and responsible for not taking action against the unauthorized building".*

25) On perusal of the written briefs submitted by DGOs, it is seen that attention is drawn regarding Ex.D-2 letter submitted by the

complainant to Hon'ble Lokayukta stating that he is not interested in prosecuting the complaint and permission is sought to withdraw the same. It is relevant to note that the said letter is not produced by him to this Authority but was submitted by DW-1 H.N. Murthy during his evidence. The fact that complainant was not interested in prosecuting the matter was not deposed by him when he was examined as PW-2. No suggestions were put during his cross examination to that effect either. He was not recalled for further cross examination by DGOs to authenticate Ex.D-2 letter which he appears to have addressed to Hon'ble Lokayukta. Therefore, the said letter submitted by DW-1 will be of no use to the DGOs. Moreover, as enquiry proceedings are commenced and also concluded, no permission to withdraw the complaint can be given, even assuming that Ex.D-2 letter is genuine.

26) The role of DGOs-1 to 6 in permitting to put up unauthorized construction by Smt. Lakshamma and their inaction to stop the said construction or take any timely action is clear from the material on record, particularly from the evidence of PW-1/Sri. K. Srinivas. During his cross examination by counsel for DGOs-7 and 8, PW-1 was admitted that DGO's -7 and 8 had acted immediately by issuing notices to Smt. Lakshamma and as per his investigation the said officers have not committed any dereliction of duty and there is no misconduct on their part. Admittedly when PW-1 had visited the spot, the complainant, DGO 7/Sri. K.V. Narasimhamurthy and DGO-8/ Sri. R. Gangadhar were present. In Ex.P-9 Spot Mahazar, it

is observed that DGOs -7 and 8 had taken charge of the concerned area about 1 ½ years back and the building was already constructed by that time. They had also informed PW-1/Sri. K. Srinivas that proposal to demolish the said building U/s 462 of Karnataka Municipalities Act was submitted to the Executive Engineer, BBMP, Rajarajeshwari Nagar on 3/9/2014 after obtaining legal opinion from Legal Cell of BBMP and estimate for Rs.7.10 lakhs was submitted for demolition of the building. PW-1/Sri. K. Srinivas had also noticed that DGOs-7 and 8 had produced necessary records for verification and it was seen that BWSSB and BESCO were directed not to give water supply, sanitary connection and electricity supply connection to the aforesaid building. Since PW-1/Sri. K. Srinivas has admitted in his cross examination that DGOs-7 and 8 have not committed any dereliction of duty or mis conduct, I am of the opinion that taking note on the action taken by DGOs-7 and 8 and their co-operation during spot inspection and also the above admission made by PW-1 in his cross examination, I am of the opinion that DGOs-7 and 8 have not committed any acts of misconduct or dereliction of duty and therefore it has to be invariably held that the Disciplinary Authority has not proved the charges against the said DGOs-7 and 8. Since the observations in Ex.P-10 scrutiny notes at para 30 clearly reflects that DGOs-1 to 6 who were the concerned Assistant Executive Engineer's and Assistant Engineer's incharge of the area from the past 3 years are to be held responsible for allowing the unauthorized construction up to 3rd floor and that cogent evidence is adduced and substantial material placed before this ARE, I hold that

the Disciplinary Authority has proved the charges against DGOs -1 to 6.

27) In the case of **M.C. Mehta V/s Union of India, AIR 2013 SC 927**, Hon'ble Supreme Court at **para 61** has observed as follows,

“ Despite passing of the laws and repeated orders of the High Court and this Court, the enforcement of the laws and the implementation of the orders are utterly lacking. If the laws are not enforced and the orders of the Courts to enforce and implement the laws are ignored, the result can only be total lawlessness. It is, therefore/necessary to also identify and take appropriate action against officers responsible for this state of affairs. Such blatant misuse of properties at large scale cannot take place without connivance of the officers concerned. It is also a source of corruption. Therefore, action is also necessary to check corruption, nepotism and total apathy towards the rights of the citizens. Those who own properties that are misused have also implied responsibility towards the hardship, inconvenience, suffering caused to the residents of the locality and injuries to third parties. It is therefore, not only the question of stopping the misuse but also making the owners at default

accountable for the injuries caused to others. Similar would also be the accountability of errant officers as well since, Prima facie, such large scale misuse, in violation of laws, cannot take place without the active connivance of the officers. It would be for the officers to show what effective steps were taken to stop the misuser”.

28) Since DGOs-1 to 6 were responsible Officers incharge of the area concerned and not acted upon the complaints/ representations given by the complainant and allowed unauthorized construction upto 3 rd floor, this A.R.E. finds that Disciplinary Authority has proved the charges against the D.G.Os-1 to 6. Accordingly, this point is answered ***partly in the Affirmative.***


29) **Point No.2** : In view the aforesaid discussion, reasons stated and finding given to point no.1, this A.R.E. proceeds to record the following :

FINDINGS

The Disciplinary Authority has proved the charges against the D.G.Os-1 to 6.

The Disciplinary Authority has not proved the charges against the D.G.Os -7 and 8.

Submitted to Hon'ble Lokayukta for kind approval and further action in the matter.


(C. CHANDRA SEKHAR)
(I/c) Additional Registrar (Enquiries-13)
Karnataka Lokayukta,
Bengaluru.

:: ANNEXURES ::

Witness examined on behalf of the Disciplinary Authority
PW-1: Sri. K. Srinivas (Original)
PW-2: Sri. Anil Kumar (Original)
Witness examined on behalf of the Defence
DW-1: Sri. H.N. Murthy (Original)
Documents marked on behalf of the Disciplinary Authority
Ex. P-1: The letter addressed to Sri. Anil Kumar by Sri. K. Srinivas, Assistant Executive Engineer-1, Karnataka Lokayukta, Bengaluru dated: 29/10/2014 (Original)
Ex.P-2: The letter addressed to Assistant Executive Engineer, BBMP, Bengaluru by Sri. K. Srinivas, Assistant Executive Engineer-1, Karnataka Lokayukta, Bengaluru dated: 29/10/2014 (Original)
Ex. P-3: Provisional order issued by Assistant Executive Engineer, Laggere Sub Division, BBMP, Bengaluru (Xerox copies)
Ex. P-4: Notice issued by Assistant Executive Engineer, Laggere Sub Division to owner of the Lakshamma (Xerox copies)
Ex. P-5: Letter addressed to Lakshamma dated : 29/09/2014 to vacate the unauthorized building (Attested copies)
Ex. P-6: The letter addressed to Assistant Executive Engineer-1 and I.O, Karnataka Lokayukta, Bengaluru written by Assistant Executive Engineer, Laggere Sub Division, BBMP, Bengaluru dated: 06/11/2014 (Original)

<p>Ex. P-7: The list of Engineers worked in Laggere Sub Division, BBMP from 05/05/2011 to 05/11/2014 by Assistant Executive Engineer, Laggere Sub Division, BBMP, Bengaluru (Original)</p>
<p>Ex. P-8: C.D (Original)</p>
<p>Ex. P-9: Spot Mahazar (Original)</p> <p>Ex.P-9(a): Signatures of the I.O</p> <p>Ex.P-9(b): Signatures of the complainant.</p>
<p>Ex. P-10: Further Scrutiny Notes from para 25 to 30 in COMPT/LOK/BCD/835/2014 (Xerox copies)</p> <p>Ex.P-10(a): Signatures of the I.O.</p>
<p>Ex. P-11: Form No-I (Original)</p> <p>Ex.P-11(a): Signatures of the complainant.</p>
<p>Ex. P-12: Form No-II (Original)</p> <p>Ex.P-12(a): Signatures of the complainant</p>
<p>Ex. P-13: The copy of Sale Deed dated: 03/09/2010 under which Smt. Lakshamma W/o late Hanumanarasaiah had purchased Site Nos-4 and 11, Malagala Village for valuable consideration from one Shankar Poojari (Xerox copies)</p>
<p>Ex. P-14: The representations given by the complainant Sri Anil Kumar to BBMP officials (Xerox copies)</p>
<p>Ex. P-15: The representations given by the complainant Sri Anil Kumar to BBMP officials (Xerox copies)</p>
<p>Ex. P-16: The representations given by the complainant Sri Anil Kumar to BBMP officials (Xerox copies)</p>

Ex. P-17: The complainant written a letter to ARE-1, Karnataka Lokayukta, Bengaluru dated : 18/07/2014 (Original)

Ex.P-17(a): Signatures of the complainant.

Documents marked on behalf of the DGOs

Ex.D-1: Authorization letter (Original)

Ex.D-2: Letter to Hon'ble Lokayukta by Anil Kumar dated :28/07/2015 seeking permission to withdraw the complaint (Xerox copies)

Ex.D-3 :Copy of Speed Post acknowledgement (Xerox)



(C.CHANDRA SEKHAR)

(I/c) Additional Registrar (Enquiries-13)
Karnataka Lokayukta,
Bengaluru.



KARNATAKA LOKAYUKTA

No: LOK/ARE-13/Enq-318/2015

Multi Storied Building
Dr B.R.AmbedkarVeedhi
Bengaluru – 560 001
Date: 29-11-2021

**RECOMMENDATION UNDER RULE 14(A)(2)(d) OF THE
KARNATAKA CIVIL SERVICES (CC&A) RULES, 1957**

Sub:- Departmental Inquiry against;

- 1) Sri. N.S. Revanna,
Assistant Engineer,
BBMP, Bengaluru.
- 2) Sri.B.R. Obaiah,
Assistant Engineer,
BBMP, Bengaluru.
- 3) Sri. M.J. Kumar,
Assistant Engineer,
BBMP, Bengaluru.
- 4) Sri. Pradeep Kumar,
Assistant Engineer,
BBMP, Bengaluru.
- 5) Sri. Channaveeraiah,
Assistant Engineer,
BBMP, Bengaluru.
- 6) Sri. K.M. Yadhukrishna,
Assistant Engineer,
BBMP, Bengaluru.
- 7) Sri. K.B. Narasimha Murthy,
Assistant Engineer,
BBMP, Bengaluru.
- 8) Sri. R. Gangadhar,
Assistant Executive Engineer,
BBMP, Bengaluru - reg.

Ref:- Government Order No. UDD 312 MNU
2018, dated 26.07.2018.



The Enquiry report dated 18-10-2021 in No: LOK/ARE-13/Enq-318/2015 submitted by the Additional Registrar of Enquiries-13 (hereinafter referred to as the 'Enquiry Officer') Karnataka Lokayukta has been placed before me.

2. Pursuant to the report dated 05-03-2015 submitted by the then Hon'ble Lokayukta under Section 12(3) of the Karnataka Lokayukta Act, 1984 (hereinafter referred to as 'the Act'), the Government of Karnataka by means of its Government Order No. UDD 312 MNU 2015 dated 17-06-2015, while accepting the recommendation made U/Sec. 12(3) of the Act, initiated Disciplinary proceedings against 1) Sri. N.S. Revanna, Assistant Engineer, BBMP, Bengaluru, 2) Sri. B.R. Obaiiah, Assistant Engineer, BBMP, Bengaluru 3) Sri. M.J. Kumar, Assistant Engineer, BBMP, Bengaluru 4) Sri. Pradeep Kumar, Assistant Engineer, BBMP, Bengaluru 5) Sri. Channaveeraiah, Assistant Engineer, BBMP, Bengaluru 6) Sri. K.M. Yadhukrishna, Assistant Engineer, BBMP, Bengaluru 7) Sri. K.B. Narasimha Murthy, Assistant Engineer, BBMP, Bengaluru 8) Sri. R. Gangadhar, Assistant Executive Engineer, BBMP, Bengaluru (hereinafter referred to as Delinquent



Government Officers-1 to 8, for short DGOs-1 to 8 respectively) and entrusted the same to the Lokayukta to conduct an enquiry with regard to the allegations made against the DGOs under Rule 14-A of Karnataka Civil Services (CCA) Rules, 1957.

3. Subsequent to the receipt of the said Government Order dated 17-06-2015, the then Hon'ble Lokayukta by means of a Nomination Order No.LOK/DE/318/2015 dated 17-06-2015, nominated the Additional Registrar of Enquiries-13, Karnataka Lokayukta, Bengaluru as Enquiry Officer to frame charges and conduct an inquiry against the DGOs.

4. The Enquiry Officer has framed the Articles of charges against the DGOs. It is useful to extract the Article of charges framed against the DGOs, which reads as hereunder:

CHARGE

“That you-DGO Nos. 1) Sri. N.S. Revanna, Assistant Engineer, BBMP, Bengaluru, 2) Sri. B.R. Obaiiah, Assistant Engineer, BBMP, Bengaluru, 3) Sri. M.J. Kumar, Assistant Engineer, BBMP, Bengaluru,



4) Sri. Pradeep Kumar, Assistant Engineer, BBMP, Bengaluru, 5) Sri. Channaveeraiah, Assistant Engineer, BBMP, Bengaluru, 6) Sri. K.M. Yadhukrishna, Assistant Engineer, BBMP, Bengaluru, 7) Sri. K.B. Narasimha Murthy, Assistant Engineer, BBMP, Bengaluru, 8) Sri. R. Gangadhar, Assistant Executive Engineer, BBMP, Bengaluru while discharging your duties:

You-DGO Nos-1 to 8 are responsible for allowing the unauthorized construction up to 3rd floor at site No.4 and 11, Malagala Main Road, Ward No.73, Kottigepalya, Laggere Sub Division, Bengaluru and for not taking action against the unauthorized building.

and thereby you failed to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of Government Servants and thus you are guilty of Misconduct under Rule 3(1) (i) to (iii) of Karnataka Civil Service(Conduct) Rules 1966”.



5. The substance of the charge levelled against the DGOs No. 1 to 8 is that they have failed to prevent the unauthorized construction made by the owner of site no. 4 and 11, Malagala Main Road, Ward No.73, Kottigepalya, Laggere Sub-Division, Bengaluru and thereby committed dereliction of duty.

6. It is relevant to point out that Smt. Lakshamma W/o Late Hanumanarasaiah is the owner of the site bearing no.4 and 11, measuring 30X80 feet, situated at Kottigepalya, Malagala Main Road, Opposite to SBI Building, Ward No.73 of BBMP, Bengaluru. She did not obtain any sanctioned plan from the competent authority as she held only 'B' Khatha and 'B' Khatha holders were not allowed to put up any construction on the site and as such the plan was not sanctioned to such 'B' Khatha holders. However, she has put up an unauthorized construction on the said site. Though, the construction cannot be made without there being a valid sanctioned plan issued in that behalf, the respondents have failed to prevent the same. In this regard, PW-2 Sri. Anil Kumar has filed a complaint before this authority. Based on his complaint, an investigation was taken up and a



recommendation dated 05.03.2015 under Sec. 12(3) of the Karnataka Lokayukta Act was made to the competent authority against respondents with regard to their failure to prevent the unauthorized construction made by Smt. Lakshmaamma. As observed earlier, the competent authority having accepted the recommendation made to it, initiated disciplinary proceedings against DGOs and entrusted enquiry to Lokayukta under Rule 14-A of KCS (CC&A) Rules, 1957.

7. Pursuant to the Articles of Charges issued, the DGOs have filed their written statement denying the charge leveled against them. During the course of enquiry, the disciplinary authority has examined the complainant Sri. Anil Kumar as PW-2 and Sri. K. Srinivas, Assistant Executive Engineer, TAC, Karnataka Lokayukta as PW-1 and as many as seventeen documents were marked on behalf of disciplinary authority as Ex.P-1 to Ex.P-17. On the other hand one Sri. H.N. Murthy was examined as DW-1 on behalf of DGOs and three documents were marked as Ex.D-1 to Ex.D-3.

8. The Enquiry Officer, after considering the oral and documentary evidence of both parties, has come to the



conclusion that the disciplinary authority has proved the charges leveled against the DGO No.1 to 6 and the disciplinary authority has not proved the charges leveled against DGOs No. 7 and 8. In this connection, it is useful to extract the paragraph no. 26 of the enquiry report, which reads as hereunder;

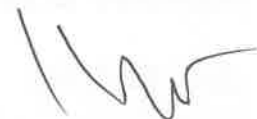
26) The role of DGOs-1 to 6 in permitting to put up unauthorized construction by Smt. Lakshamma and their inaction to stop the said construction or take any timely action is clear from the material on record, particularly from the evidence of PW-1/Sri. K. Srinivas. During his cross examination by counsel for DGOs-7 and 8, PW-1 was admitted that DGO's -7 and 8 had acted immediately by issuing notices to Smt. Lakshamma and as per his investigation the said officers have not committed any dereliction of duty and there is no misconduct on their part. Admittedly when PW-1 had visited the spot, the complainant, DGO 7/Sri. K.V. Narasimhamurthy and DGO-8/ Sri. R. Gangadhar were present. In Ex.P-9 Spot Mahazar, it is observed that DGOs -7 and 8 had taken charge of the concerned area about 1 ½ years back and the building was already constructed by that time. They had also informed PW-1/Sri. K. Srinivas that proposal to demolish the said building U/s 462 of Karnataka Municipalities Act was submitted to the Executive Engineer, BBMP, Rajarajeshwari Nagar



on 3/9/2014 after obtaining legal opinion from Legal Cell of BBMP and estimate for Rs.7.10 lakhs was submitted for demolition of the building. PW-1/Sri. K. Srinivas had also noticed that DGOs-7 and 8 had produced necessary records for verification and it was seen that BWSSB and BESCO were directed not to give water supply, sanitary connection and electricity supply connection to the aforesaid building. Since PW-1/Sri. K. Srinivas has admitted in his cross examination that DGOs-7 and 8 have not committed any dereliction of duty or misconduct, I am of the opinion that taking note on the action taken by DGOs-7 and 8 and their co-operation during spot inspection and also the above admission made by PW-1 in his cross examination, I am of the opinion that DGOs-7 and 8 have not committed any acts of misconduct or dereliction of duty and therefore it has to be invariably held that the Disciplinary Authority has not proved the charges against the said DGOs-7 and 8. Since the observations in Ex.P-10 scrutiny notes at para 30 clearly reflects that DGOs-1 to 6 who were the concerned Assistant Executive Engineer's and Assistant Engineer's in-charge of the area from the past 3 years are to be held responsible for allowing the unauthorized construction up to 3rd floor and that cogent evidence is adduced and substantial material placed before this ARE, I hold that the Disciplinary Authority has proved the charges against DGOs -1 to 6.



9. It is relevant to point out that Sec. 321 of the Karnataka Municipalities Act, 1961 empowers the Commissioner to take action against the owner who has commenced the construction without obtaining permission. As could be seen from the material on record, the owner of the building in question has not obtained any permission or sanctioned plan from the BBMP as she held 'B' Khatha in respect of the site in question. No doubt, the owner of the building is holding 'B' Khatha. It does not mean that she can construct the building without there being the licence and approved plan and the Engineers of BBMP are entrusted with the responsibilities of preventing such illegal construction. The Enquiry Officer in the Enquiry Report has found that DGO Nos.1 to 6 have failed to take action against the owner of the building and as such the Disciplinary Authority has proved the charge leveled against them. However, since the DGO Nos.7 and 8 having initiated action in terms of Sec. 462 of the Karnataka Municipalities Act, the Enquiry Officer has reached the conclusion that the disciplinary authority has not proved the charge leveled against them.



10. So far as the DGOs No. 7 and 8 are concerned, as observed earlier, the Enquiry Officer, having regard to the fact that they have initiated action against the owner of the building in question as required under Section 321 and 462 of Karnataka Municipalities Act, has reached the conclusion that there is no Dereliction of Duty on their part. The said conclusion reached by the Enquiry Officer so far as the DGOs No. 7 and 8 are concerned is supported by the evidence available on record. Therefore, I do not find any good ground to take a different view from the one taken by the Enquiry Officer. Therefore, the conclusion reached by the Enquiry Officer in so far as DGOs No.7 and 8 are concerned that the Disciplinary Authority has failed to prove the charges leveled against them is required to be accepted and a recommendation is required to be made accordingly to the Competent Authority.

11. Now the question is as to whether the conclusion reached by the Enquiry Officer that the Disciplinary Authority has proved the charge leveled against DGOs No.1 to 6 is supported by the evidence available on record and therefore is required to be accepted? Having gone through the Enquiry Report and also the evidence on record



carefully, I am of the view that it is difficult to accept the conclusion reached by the Enquiry Officer holding that the Disciplinary Authority has proved the charge leveled against the DGOs No.1 to 6.

12. It is relevant to point out that during the course of preliminary investigation, PW-1 has conducted spot inspection on 05.11.2014 and drew up a spot mahazar as per Ex.P-9, wherein he has observed that during the course of spot inspection, he had enquired the local people and he had come to know that the building was under construction since three years. Subsequently, he has collected the details of the officers who have worked since three years prior to the date of spot inspection. Accordingly, the Assistant Executive Engineer, BBMP, Laggare Sub-Division had furnished the details of the Assistant Executive Engineers and Assistant Engineers who have worked from 05.05.2011 to 05.11.2014 as per Ex.P-7. As per Ex.P-7, DGO No.1 was holding the charge of Assistant Engineer from 05.05.2011 to 29.02.2012, DGO No.2 was holding the additional charge of Assistant Engineer from 02.12.2011 to 05.03.2012, DGO No.3 was holding the charge of Assistant Engineer from 05.03.2012



to 02.05.2012, DGO No.4 was holding the charge of Assistant Engineer from 30.05.2012 to 31.10.2012, DGO No.5 was holding the charge of Assistant Engineer from 01.11.2012 to 20.01.2013 and 13.06.2013 to 06.11.2013 and DGO No.6 was holding the charge of Assistant Engineer from 21.01.2013 to 12.06.2013. The facts set out above show that all the DGOs No. 1 to 6 were working only for a short period for about three to five months from 05.05.2011 to 06.11.2013. Therefore, from the conclusion reached by the Enquiry Officer two questions that require to be addressed are; (i) whether there is any evidence on record except Ex.P-9 mahazar wherein it is recorded by PW-1 that from the local people he came to know that construction had been taken up since three years prior to the date of mahazar? (ii) whether DGOs No. 1 to 6 during their short period/tenure of posting committed dereliction of duties in not inspecting the site and permitted the construction without there being a valid licence and approved plan?

13. It is the specific defence of DGO Nos.1 to 6 that during their tenure they have not received any complaint neither from the complainant nor from any person with



regard to the alleged illegal construction carried out on site No.3 and 11. Further, it is their specific contention that the construction of the building in question was commenced during 2014 i.e., when DGOs No.7 and 8 were working as Assistant Engineer and Assistant Executive Engineer respectively and hence they are not responsible for illegal construction made on the site in question. The Enquiry Officer relying upon the oral evidence of PW-1 and the documentary evidence more particularly Ex.P-9 has reached the conclusion that DGOs No. 1 to 6 are responsible for the alleged illegal construction. It is relevant to point out that the Enquiry Officer did not consider the oral evidence of PW-2, who is the complainant and also the representations submitted by him before filing of complaint before this authority.

14. Further, in his mahazar Ex.P-9, PW-1 has not referred the name and address of the local persons who alleged to have informed him that construction was going on for the last around three years. No one was examined to show that the construction had been commenced for the period of three years from the date of mahazar and it was going on for a period of three years. Except the




observations of PW-1 in Ex.P-9 that he was informed by local people that the construction was going on since three years, no other evidence is adduced by the Disciplinary Authority that the construction was going on since three years prior to the date of mahazar/Ex.P-9. It is also not the case of complainant PW-2 that DGO Nos. 1 to 6 permitted the owner of the building to make construction without there being a valid sanctioned plan and licence. It is also not the case of PW-2 that he had given a complaint to DGO Nos. 1 to 6 or other public servants of BBMP bringing to their notice that the owner of the building had started construction without there being a valid licence and approved plan.

15. It is only on 07.02.2014, PW-2 has made representations to the Joint Commissioner; Assistant Revenue Officer and Health Officer, Ward No.73, BBMP as per Ex.P-14 to Ex.P-16 complaining about the illegal construction taken up by the owner of site bearing no.4 and 11, Kottigepalya, Ward No.73, Bengaluru. The representations submitted by him do not indicate that the construction was being carried on for about three years prior to the date of representations. The representations



disclose that as on 07.02.2014, the owner of the building in question was carrying on the construction without obtaining licence and sanctioned plan. Therefore, he made a request for stopping the illegal construction and also to demolish the construction already made on the said site. Since, the concerned authorities of BBMP have failed to take any steps to stop the construction and demolish the illegal construction taken up by the owner of the building in question, the complainant/PW-2 has filed complaint before this authority on 25.03.2014 as per Ex.P-11. Even in Ex.P-11, PW-2 has not stated that the construction in question was going on for a period of three years and DGO Nos. 1 to 6 had committed any dereliction of duty in permitting the construction of the building.

16. Further, the material placed on record discloses that subsequently, the then Hon'ble Lokayukta has referred the matter to the Technical Audit Cell attached to Lokayukta institution for investigation and submit report. Accordingly, PW-1 has conducted the spot inspection on 05.11.2014 at Ex.P-9, wherein it is stated that as on the date of spot inspection made by PW-1, Ground Floor + Three Upper Floors building was constructed. However,



the spot mahazar/Ex.P-9 does not disclose as to when was the construction of the building in question commenced.


17. In this regard, it is relevant to refer to the oral evidence of PW-2. In the course of his cross examination, PW-2 has stated as hereunder;

“ಅನಧಿಕೃತ ಕಟ್ಟಡ ಎಂದು ಗೊತ್ತಾದ ಸ್ವಲ್ಪ ದಿನಗಳಲ್ಲಿ ನಾನು ದೂರನ್ನು ನೀಡಿದ್ದೇನೆ. ಸದರಿ ಅನಧಿಕೃತ ಕಟ್ಟಡ 2014ರಲ್ಲಿ ಪ್ರಾರಂಭವಾಗಿರಬಹುದು. ನಾನು ದೂರು ಕೊಟ್ಟಾಗ ಸದರಿ ಅನಧಿಕೃತ ಕಟ್ಟಡದ ಪಿಲ್ಲರ್ ಹಾಕಲಾಗಿತ್ತು”.

18. The evidence of PW-2 extracted above would prima-facie indicates that the construction of the building in question was commenced during the year 2014 and as on the date of filing the complaint before this authority, the owner of the building in question has constructed only basement pillars. The evidence referred to above and the representations submitted by PW-2 before the authorities of BBMP on 07.02.2014 supports the defence of DGO Nos. 1 to 6 that the construction of the building in question was commenced during the year 2014. DGOs No. 1 to 6 have worked prior to 06.11.2013, which means the construction of building in question was not commenced during their tenure.

19. Further, as observed earlier, PW-1 has not at all furnished the names and addresses of the local people who have informed him that the building was under construction since three years. In the absence of the details of the persons who have informed PW-1 about the commencement of the construction of the building in question, it is not safe to rely upon the sole observation made by him at Ex.P-9, when there is evidence on record to show that the construction was commenced during the year 2014.

20. Further, as observed earlier, the material on record shows that DGO Nos. 1 to 6 had worked for a short period ranging from three to five months. Under these circumstances, in a vast area especially when the site in question is a 'B' Khatha site, it is too much to expect them to inspect the site in question and draw an inference that there was a deliberate dereliction of duty on their part. The finding of the Enquiry Officer that the charges leveled against the DGO Nos. 1 to 6 is proved in my opinion is on the basis of unsubstantiated evidence which results in serious consequences affecting their service conditions. Therefore, unless there is a cogent and reliable evidence



adduced by the Disciplinary Authority to hold the DGO Nos. 1 to 6 are guilty of the charge leveled against them, I am of the view it is not safe to hold them responsible for the construction of the building in question.

21. In the light of the evidence available on record to which I have referred to above, I am of the view that the conclusion reached by the Enquiry Officer that the Disciplinary Authority has proved the charge leveled against the DGOs No.1 to 6 is unsustainable and it does not merit acceptance and I am not persuaded to accept the said conclusion reached by the Enquiry Officer.

22. The one other question, I am required to advert to before I proceed to make any recommendation to the Government/Competent Authority is as to whether it is permissible for the Lokayukta to differ from the conclusion reached by the Enquiry Officer and make a recommendation to reject the report of the Enquiry Officer, if the conclusion reached by the Enquiry Officer is not correct and Lokayukta can make a recommendation to the Government/Competent Authority not to accept the report of the Enquiry Officer and in its place make a recommendation to accept the



report of the Lokayukta? In this connection while considering in LOK/ARE-10/Enq-218/2014, I had taken a view that it is permissible. Instead of reconsidering the matter over and again, it is useful to extract the same which reads as hereunder;

13. The only other question, I am required to advert to before I proceed to make any recommendation to the Government/Competent Authority is as to whether it is permissible for the Lokayukta to differ from the conclusion reached by the Enquiry Officer and make a recommendation to reject the report of the Enquiry Officer, if the conclusion reached by the Enquiry Officer is not correct and he (Lokayukta) can make a recommendation to the Government/Competent Authority not to accept the report of the Enquiry Officer and in its place make a recommendation to accept the report of the Lokayukta? Before, I proceed to answer this question, it is useful to extract sub-rule 2(c), (d) and (e) of Rule 14-A of the Karnataka Civil Services (CC &A) Rules, 1957 which reads as hereunder;

“(c) The Lokayukta, the Upalokayukta or the officer authorized under clause (b) to



conduct an inquiry shall conduct it in accordance with the provisions of Rule 11 in so far as they are inconsistent with the provisions of this rule and for that purpose shall have the powers of the Disciplinary Authority referred to in the said rule.

(d) After the inquiry is completed, the record of the case along with the findings of the Inquiring Officer and the recommendation of the Lokayukta or the Upalokayukta as the case may be, shall be sent to the Government.

(e) On receipt of the record under clause (d) the Government shall take action in accordance with the provisions of Rule 11-A and in all such cases the Government shall be the Disciplinary Authority competent to impose any of the penalties specified in Rule 8.”

14. The clause (b) of the sub-rule 2 of Rule 14-A empowers Lokayukta/Upalokayukta to conduct an enquiry by himself or authorize the same to an officer on the staff of the Lokayukta. Clause (d) of sub-rule 2 of Rule 14-A further provides that after the enquiry is completed the record of the case along with the findings of the Enquiry Officer and recommendation of the Lokayukta/Upalokayukta shall be sent to the Government. Clause (d) of sub-rule 2 of Rule



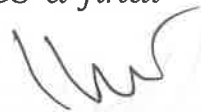
14-A also contemplates for a situation where enquiry is not held either by the Lokayukta/Upalokayukta and it is entrusted to an Enquiry Officer. Clause (d) of sub-rule 2 of Rule 14-A contemplates two contingencies. Firstly, where an Enquiry is conducted by an Enquiry Officer, the record of the case along with the findings of the Enquiry Officer is required to be sent to the Lokayukta/Upalokayukta. Secondly, on receipt of such records of the enquiry which includes Enquiry Report, the Lokayukta/Upalokayukta is required to forward the record of enquiry along with his recommendations to the Government. Under these circumstances when clause (d) of sub-rule 2 of Rule 14-A mandates that the Lokayukta/Upalokayukta to make his recommendation to the Government along with the record of the case and the findings of the Enquiry Officer, in the very nature of the power conferred on the Lokayukta/Upalokayukta. Wherein it is stated that they are required to make a recommendation, implies in it the Lokayukta/Upalokayukta is required to apply his mind to the findings of the Enquiry Officer and make his recommendation either for acceptance of the report of the Enquiry Officer if it deserves to be accepted on merit or reject



the same if it does not merit acceptance. It is needless to point out that disciplinary proceedings are initiated against the erring officials. If, under these circumstances when power is conferred by the Rules to make a recommendation to the State Government, the Lokayukta/Upalokayukts who is a very high functionary, the mandate of the Rule cannot be understood to mean as providing that the Lokayukta/Upalokayukta will only act as a post office in only forwarding the record of the enquiry along with the report of the Enquiry Officer to the government. The very nature of the power conferred on the Lokayukta/Upalokayukta which empowers him to make recommendation casts an obligation on him to consider the report of the Enquiry Officer and the evidence on record and apply his mind to the conclusion reached by the Enquiry Officer with regard to the charges leveled against the DGO. Any error committed by the Enquiry Officer while appreciating the evidence on record and reaching the conclusion would not only affects the service conditions of the DGO concerned, but it would also have serious adverse impact on the State Administration. For example, if an Enquiry Officer unjustifiably and contrary to the evidence on record finds the DGO who is really



guilty as not guilty and if the said report is not allowed to be corrected by the Lokayukta/Upalokayukta while making recommendation, as noticed by me earlier serious adverse effect will have on the State Administration. Therefore, the power to take a different view from the one taken by the Enquiry Officer is as observed by me earlier can be inferred and spelled out from clause (d) of sub-rule 2 of Rule 14-A of KCS (CC&A) Rules, 1957. Whenever, different view is expressed by Lokayukta/Upalokayukta, it is needless to point out that the Lokayukta/Upalokayukta have to give reasons for taking a different view from the one taken by the Enquiry Officer. However, when the Lokayukta/Upalokayukta make a recommendation to the Government as provided under clause (d) sub-rule 2 of Rule 14-A, it is open to the Government/Disciplinary Authority either to accept the recommendation of the Lokayukta/Upalokayukta or accept the conclusion reached by the Enquiry Officer, though normally Government should proceed to accept the recommendation of the Lokayukta/Upalokayukta unless it finds that the recommendation made by the Lokayukta/Upalokayukta is erroneous in law. However, before the Government takes a final



decision on the recommendation of Lokayukta/Upalokayukta who had sent a recommendation differing from the conclusion reached by the Enquiry Officer and such recommendation made by the Lokayukta/Upalokayukta is against the interest of the DGO, it is mandatory on the part of the Government to serve copies of the report of the Enquiry Officer as well as the recommendation of the Lokayukta/Upalokayukta to the DGO and seek his explanation before a final decision is taken by the Government/Disciplinary Authority.

15. I have considered the question referred to above in some detail in view of the conflict views expressed by the two Division Benches of the Hon'ble Karnataka High Court. In Writ Appeal No. 8594 of 2012, the Division Bench of Hon'ble High Court by means of its Judgment dated 18th February, 2015, at Paragraph 11 has taken the view that it is not permissible for the Upalokayukta to differ from the Enquiry Officers findings and hold that the charges were proved against the DGO and the said conclusion of Upalokayukta was without the authority of Law under sub-rule 2 of Rule 14-A of the Rules. In the said Judgment, the



Division Bench has not considered the view expressed by another Division Bench Judgment made in W.P. No. 62030/12 by its judgment dated 5th November, 2012 and also the effect and correct interpretation to be placed on sub-rule 2 of Rule 14-A of the Rules. No doubt, in W.P. No. 62030/12 there is no elaborate consideration as to whether it is permissible for Lokayukta/Upalokayukta while making recommendation to take different view from the one taken by the Enquiry Officer. However, the reading of the said judgment and the conclusion reached by the Court in the said Judgment clearly indicates that it is permissible for Lokayukta/Upalokayukta to differ from the conclusion reached by the Enquiry Officer. However, only condition imposed in the said Judgment is that the Lokayukta/Upalokayukta should give an opportunity to the DGO before he makes recommendation differing from the view taken by the Enquiry Officer. In my considered view even the view taken by the Division Bench in W.P. No. 62030/2012 that the Lokayukta/Upalokayukta should give an opportunity to the DGO when he takes a different view from the Enquiry Officer does not appear to be correct in Law. In my considered view, it is not necessary for the



Lokayukta/Upalokayukta to give an opportunity to the DGO at the stage of making recommendation to the State Government. It is for the State Government to give an opportunity to the DGO while accepting the recommendation of the Lokayukta/Upalokayukta on the conclusion reached by the Enquiry Officer. If the recommendation made by Lokayukta/Upalokayukta is adverse to the interest of the DGO. If the State Government accepts the views of the Enquiry Officer which is in favour of the DGO as against the recommendation of Lokayukta/Upalokayukta or if the recommendation made by the Lokayukta/Upalokayukta is in favour of the DGO, the question of giving an opportunity to the DGO does not arise.

16. As noticed by me earlier, I have considered the question of power of Lokayukta/Upalokayukta under Rule 14-A while making the recommendation to the State Government in some detail in the light of the view taken by the Division Bench of High Court in Writ Appeal No. 8594/2012 that the Lokayukta/Upalokayukta has no power to take a different view from the one taken by the Enquiry Officer while making recommendation



to the State Government. However, in the present case since I have taken a view in favour of the DGO differing from the view taken by the Enquiry Officer, question of giving an opportunity to the DGO will not arise, unless the government is inclined to accept the report of the Enquiry Officer which is adverse to the interest of the DGO as against my report which is favourable to the DGO.....”

23. In the light of the discussion made above on merits, the enquiry report submitted by the Enquiry Officer in so far as DGOs No.1 to 6 is concerned, it is liable to be rejected as not sustainable in Law and in its place the recommendation requires to be made to the Government holding that the charge leveled against the DGOs No.1 to 6 has not been established by the Disciplinary Authority and the proceedings against them requires to be dropped.

24. In the light of the discussion made above, I make the following recommendation;

- (i) The enquiry report dated; 18.10.2021 submitted by the Enquiry Officer (Additional Registrar of Enquiries-13) holding that the



Disciplinary Authority has failed to prove the charge leveled against the DGOs No. 7 and 8 i.e., (7) Sri. K.B. Narasimha Murthy, Assistant Engineer, BBMP, Bengaluru (8) Sri. R. Gangadhar, Assistant Executive Engineer, BBMP, Bengaluru requires to be accepted as correct.

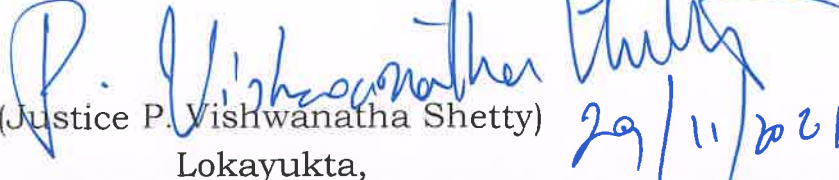
(ii) The enquiry report dated 18.10.2021 given by the Enquiry Officer against the DGOs No.1 to 6 i.e., (1) Sri. N.S. Revanna, Assistant Engineer, BBMP, Bengaluru, (2) Sri. B.R. Obaiah, Assistant Engineer, BBMP, Bengaluru (3) Sri. M.J. Kumar, Assistant Engineer, BBMP, Bengaluru (4) Sri. Pradeep Kumar, Assistant Engineer, BBMP, Bengaluru (5) Sri. Channaveeraiah, Assistant Engineer, BBMP, Bengaluru (6) Sri. K.M. Yadhukrishna, Assistant Engineer, BBMP, Bengaluru requires to be rejected as unsustainable in Law and contrary to the evidence on record and the disciplinary authority has failed to establish the charge framed against the DGOs No.1 to 6 and therefore the enquiry proceedings initiated against them requires to be dropped.



Accordingly, recommendation is made to the Competent Authority holding that the Disciplinary Authority has failed to prove the charge leveled against the DGOs No. 1 to 8.

25. Action taken in the matter be intimated to this Authority within three months from the date of receipt of the recommendation.

Connected records are enclosed.


(Justice P. Vishwanatha Shetty)
Lokayukta,
State of Karnataka, Bengaluru.

29/11/2021.

