

GOVERNMENT OF KARNATAKA



KARNATAKA LOKAYUKTA

No:UPLOK-1/DE/168/2017/ARE-14

Multi Storied Buildings,
Dr.B.R.Ambedkar Veedhi,
Bengaluru-560 001,
Date: 16/11/2018

RECOMMENDATION

Sub:-Departmental inquiry against Sri Ashwath Reddy, Assistant Executive Engineer, Rajarajeshwari-nagar Sub-division, Bruhath Bengaluru Mahanagara Palike, Bengaluru.

Ref:-1) Government Order No.ನಲಇ 700 ಎಂಎನ್ಯು 2016 Bengaluru dated 13/01/2017.

2) Nomination order No.UPLOK-1/DE/168/2017 Bengaluru dated 02/02/2017 of Upalokayukta-1, State of Karnataka, Bengaluru.

3) Inquiry Report dated 14/11/2018 of Additional Registrar of Enquiries-14, Karnataka Lokayukta, Bengaluru

The Government by its Order dated 13/01/2017, initiated the disciplinary proceedings against Sri Ashwath Reddy, Assistant Executive Engineer, Rajarajeshwarinagar Sub-division, Bruhath Bengaluru Mahanagara Palike, Bengaluru (hereinafter referred to as Delinquent Government Official for short as **DGO**) and entrusted the Departmental Inquiry to this Institution.

2. This Institution by Nomination Order No.UPLOK-1/DE/168/2017 dated 02/02/2017 nominated Additional Registrar of Enquiries-1, Karnataka Lokayukta, Bengaluru, as the Inquiry Officer to frame charges and to conduct Departmental Inquiry against DGO for the alleged charge of misconduct, said to have been committed by him. Subsequently by Order No. UPLOK-1/

DE/2017 Bengaluru dated 06/07/2017, the Additional Registrar of Enquiries-7 was re-nominated as Inquiry Officer to conduct Departmental inquiry against DGO. Again by Order No. UPLOK-1 &2/DE/Transfers/2018, Bengaluru dated 06/08/2018 the Additional Registrar of Enquiries-14 was re-nominated as Inquiry Officer to conduct Departmental Inquiry against DGO.

3. The DGO Sri Ashwath Reddy, Assistant Executive Engineer, Rajarajeshwarinagar Sub-division, Bruhath Bengaluru Mahanagara Palike, Bengaluru was tried for the following charge:-


“While you DGO Sri. Ashwath Reddy, Assistant Executive Engineer, Rajarajeshwarinagar Sub-Division, BBMP, Bangalore that a complaint was lodged on 12.2.2016 by one Sri Honnagangaiah S/o. Gangegowda Rep. by GPA holder Gangaiah M.G., No.110, RMV 2nd Stage, 4th Block, MLA Layout, Bengaluru alleging that when the DGO was working as the Assistant Executive Engineer in Rajarajeshwari Nagar Sub Division, BBMP, Bengaluru did not take any action to clear the illegal construction undertaken by Sri. Kishore Savanth and Sri B.S. Suresh proprietors of M/s A.R.A Developers violating the building bye-laws even though you had taken permission under Section 462 of KMC Act to clear the construction and therefore, you DGO has failed to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of a Government Servant and therefore you are guilty of misconduct under Rule 3(1)(i) to (iii) of KCS (Conduct) Rules 1966.”

4. The Inquiry Officer (Additional Registrar of Enquiries-14) on proper appreciation of oral and documentary evidence has held

that, the Disciplinary Authority has proved the above charge against DGO Sri Ashwath Reddy, Assistant Executive Engineer, Rajarajeshwarinagar Sub-division, Bruhath Bengaluru Mahanagara Palike, Bengaluru.

5. On re-consideration of inquiry report, I do not find any reason to interfere with the findings recorded by the Inquiry Officer. It is hereby recommended to the Government to accept the report of Inquiry Officer.
6. As per the First Oral Statement submitted by DGO, he is due to retire from service on 30/06/2022.
7. Having regard to the nature of charge proved against DGO Sri Ashwath Reddy, it is hereby recommended to the Government for imposing penalty of withholding four annual increments payable to DGO Sri Ashwath Reddy, Assistant Executive Engineer, Rajarajeshwarinagar Sub-division, Bruhath Bengaluru Mahanagara Palike, Bengaluru with cumulative effect.
8. Action taken in the matter shall be intimated to this Authority.

Connected records are enclosed herewith.


(JUSTICE N. ANANDA) 16/11
Upalokayukta-1,
State of Karnataka,
Bengaluru

KARNATAKA LOKAYUKTA

No.UPLOK-1/DE/168/2017/ARE-14

M.S. Building
Dr.B.R. Ambedkar Road
Bangalore-560 001
Date:14/11/2018**ENQUIRY REPORT****Present :** Smt. K.Bhagya, Additional
Registrar of Enquiries-14
Karnataka Lokayukta
Bangalore**Sub:** Departmental Enquiry against Sri.
Ashwath Reddy, Assistant Executive
Engineer, Rajarajeshwari Nagar, Sub-
Division, BBMP, Bangalore-reg.

- Ref:**
1. Report u/s 12(3) of the K.L Act, 1984 in
-
- Compt/Uplok/BCD/406/2016/ARLO-1,
-
- Dtd.,27.10.2016.
-
2. Government Order No.ನಅಇ 700 ಎಎನ್‌ಯು
-
- 2016, ಬೆಂಗಳೂರು, ದಿ:13.1.2017.
-
3. Nomination Order No:UPLOK-1/DE/
-
- 168/2017, dated: 2.2.2017 of
-
- Hon'ble Upalokayukta-1, Bangalore.
-
4. Note No.Uplok-&2/DE/Transfers/2018
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- Dt: 6.8.2018.

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The complainant by name Sri. Honna-gangaiah S/o. Gangegowda Rep. by GPA Holder Gangaiah M.G., No.110, RMV 2nd Stage, 4th Block, MLA Laout, Bengaluru has filed the complaint against this DGO alleging misconduct and dereliction of duty.

2. After completion of the investigation, a report was sent to the Government u/s 12(3) of the Karnataka Lokayukta



Act as per reference No.1. In pursuance of the report the Government of Karnataka was pleased to issue the G.O. Dtd., 13.1.2017 authorizing the Hon'ble Upalokayukta to hold enquiry as per reference No.2. In pursuance of the G.O., the nomination was issued by the Hon'ble Upalokayukta-1 on 02-02-2017 authorizing ARE-7 to hold enquiry and to report as per reference No. 3 and this file is transferred from ARE-7 to ARE-14 as per reference No.4.

3. On the basis of the nomination, the Articles of Charge against the DGO, framed by the then Additional Registrar of Enquiries-7 which includes Articles of Charge at Annexure-I and Statement of Imputation of Misconduct at Annexure No.II are the following and the same was sent to the DGO, on 23.03.2017.

ANNEXURE-I

CHARGE:

4. While you the DGO., Sri. Ashwatha Reddy, Assistant Executive Engineer Rajarajeshwari Nagar, Sub-Division, BBMP, Bangalore that a complaint was lodged on 12.2.2016 by one Sri. Honnagangaiah S/o. Gangegowda Rep. by GPA Holder Gangaiah M.G., No.110, RMV 2nd Stage, 4th Block, MLA Laout, Bengaluru alleging that, when the DGO was working as the Asst. Executive Engineer in Rajarajeshwari Nagar Sub-division, BBMP, Bengaluru did not take any action to clear the illegal construction under



taken by Sri. Kishore Savanth and Sri. B.S. Suresh, Proprietors of M/s. A.R.A. Developers violating the building Bye-laws even though he had taken permission u/S.462 of KMC Act to clear the construction and therefore, the DGO had 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 KCS (Conduct) Rules 1966.

ANNEXURE-II

STATEMENT OF IMPUTATION OF MISCONDUCT

5. On the basis of a complaint filed by Sri. Honnagangaiah S/o. Gangegowda Rep. by GPA Holder Gangaiah M.G., No.110, RMV 2nd Stage, 4th Block, MLA Laout, Bengaluru (hereinafter referred as complainant in short) an investigation was taken up U/Sec.9 of the Karnataka Lokayukta Act against you DGO., Sri. Ashwath Reddy, Assistant Executive Engineer, Rajarajeshwari Nagar, Sub-Division, BBMP, Bangalore (hereinafter referred as Delinquent Government Official – DGO in short).

6. According to the complainant one Sri. Ashwatha Reddy, Assistant Executive Engineer Rajarajeshwari Nagar, Sub-Division, BBMP, Bangalore when he was working as the Asst. Executive Engineer in Rajarajeshwari Nagar Sub-division, BBMP, Bengaluru did not take any action to clear the illegal construction under taken by Sri.



Kishore Savanth and Sri. B.S. Suresh, Proprietors of M/s. A.R.A. Developers violating the building Bye-laws even though he had taken permission under Sec.462 of KMC Act to clear the illegal construction and therefore, the DGO had failed to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of Government Servant.

7. The DGO had filed his comments.

8. On careful consideration of the materials on record the reply submitted by the DGO, found not satisfactory.

9. The facts supported by the material on record prima facie show that the DGO being the public servant had failed to maintain absolute integrity besides devotion to duty and acted in a manner unbecoming of Government servant and thereby committed misconduct as per Rule 3(1) (i) to (iii) of KCS (Conduct) Rules, 1966 and made himself liable for disciplinary action.

10. A report under Section 12(3) of the Karnataka Lokayukta Act was sent to the Competent Authority to initiate disciplinary proceedings against the DGO. Accordingly, the Government after considering the report had entrusted the enquiry to the Hon'ble Upalokayukta.

11. The said Articles of Charge served on the DGO and the DGO., and the appeared before this Enquiry Officer on 5.5.2017 and his First Oral Statement under Rule 11(9) of



the KCS(CCA) Rules, 1957 was recorded. The DGO, had denied the charge.

12. The DGO., had filed the written statement in which he had contended that, he had worked as Asst. Executive Engineer in Rajarajeshwari Nagar Sub Division which had two wards namely, Ward No.129 and 160. In Ward No. 129, where the alleged construction had taken place Sri. G.R.Nagaraj was the Junior Engineer who was in charge of the said ward he had inspected the spot and reported that the construction was already completed in the year 2013 itself. Though the complainant complained that, the owner of the said building had encroached upon his property and put up the construction, the property of the complainant itself situates in an unauthorized layout, so they had no authority to take any action regarding the encroachment by the owners of the said building and hence directed the complainant to get the proper relief in a court of law and gave the endorsement to that effect. The complainant's allegation that the said building was under construction was a false allegation as the building construction had been completed in the year 2013 itself. He had discharged his duties under the supervision of Executive Engineer, Superintending Engineer etc. There was Task Force to take action on illegal construction. The task Force had the power to file criminal cases against the violations. But no action had been taken on the alleged construction



mentioned in the charge by the Task Force. Hence, prayed to exonerate him from the charge.

14. The Disciplinary Authority has examined the complainant as PW-1 and Ex.P1 to P6 got marked. The Second Oral Statement of DGO under Rule 11(16) was recorded. The DGO himself has got examined as DW-1 & Ex. D1 to D2 got marked on behalf of the DGO.

15. The points that arose for my consideration are:

Point No.1 : Whether the charge against the DGO is proved by the Disciplinary Authority?

Point No.2 : What order?

16. Heard, perused the entire case record and the written brief filed by the learned Defence Assistant. He has also relied upon the following judgements in the written brief of DGO.

- (a) E.S. Reddi Vs. Chief Secretary, Government of Andra Pradesh (1987) 3 SCC 258;
- (b) Director Gneral of Police Vs G.Dasayan 1998 SCC (L&S) 557;
- (c) K.Sukhendar Reddy Vs State of Andra Pradesh 1999 SCC (L&S) 1088;
- (d) K.Devendran Vs the District Collector Dindigal District CDJ 2012 MHC 880;
- (e) Anand Regional Co-operative Oil Seeds Grower's Union Vs Shailesh Kumar Harshabhaishah, 2006 (L & S) 1486 and
- (f) Rajendra Yadav Vs State of Madya Pradesh, CDJ 2013 SC 99.

17. My answer to the above points are as here under:



Point No. 1 : **In the Affirmative.**

Point no. 2 : **As per final order for the following ;**

REASONS

18. Point No.1 : Here as already observed above, the complainant by name Sri. Honnagangaiyah S/o. Gangegowda Rep. by GPA Holder Gangaiah M.G., No.110, RMV 2nd Stage, 4th Block, MLA Laout, Bengaluru file a complaint against the DGO alleging that, when the DGO was working as the Asst. Executive Engineer in Rajarajeshwari Nagar Sub-division, BBMP, Bengaluru did not take any action to clear the illegal construction under taken by Sri. Kishore Savanth and Sri. B.S. Suresh, Proprietors of M/s. A.R.A. Developers violating the building Bye-laws even though he had taken permission under Sec.462 of KMC Act to clear the illegal construction and therefore, the DGO had failed to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of Government Servant.

19. The Defence of the DGO is that, he had worked as Asst. Executive Engineer in Rajarajeshwari Nagar Sub Division which had two wards namely; Ward No.129 and 160. In Ward No. 129, where the alleged construction had taken place Sri. G. R. Nagaraj was the Junior Engineer who was in charge of the said ward. He had inspected the spot and reported that the construction was already completed in the year 2013 itself. Though the complainant complained



that, the owner of the said building had encroached upon his property and put up the construction, the property of the complainant itself situates in an unauthorized layout, so they had no authority to take any action regarding the encroachment by the owners of the said building and hence directed the complainant to get the proper relief in a court of law and gave the endorsement to that effect. The complainant's allegation that the said building was under construction was a false allegation as the building construction had been completed in the year 2013 itself. He had discharged his duties under the supervision of Executive Engineer, Superintending Engineer etc., there was Task Force to take action on illegal construction. The task Force had the power to file criminal cases against the violations. But no action had been taken on the alleged construction mentioned in the charge by the Task Force.

20. Here, the complainant M.G.Gangaiah S/o Gangadharaiah @ Gangegowda got examined as PW-1. He had deposed in his Chief Examination saying that, the properties in Sy. No. 32/1 and 33/2, at Srigandada Kavalu are in the name of his younger brother Honagangaiah. He is the GPA holder to look after the said properties of his brother. He had informed the owners of the ARA construction that after getting identified the Haddubastu of Sy. No. 33/1, they can proceed with the building construction work. He had also informed the stay order obtained in a civil suit in respect of Sy. No.32/1. He went



to the said Srigandada Kavalu to see the properties in the year 2014-15, by that time the A.R.A. constructions constructing the said building work by encroaching upon his brother's property without leaving set-backs. So he lodged a complaint to the DGO. He and his younger brother orally requested the DGO to stop the further construction work. But he did not take any action. Hence he lodged a complaint before this institution. His complaint is marked as Ex.P1, form No. 1 & II are marked as P2 and P3. His signatures on Ex.P1 to 3 are marked at Ex.P1(a) to P3(a). Ex.P4 is the documents relating to the Sy. No. 32/1, which are in total marked as Ex.P4. Ex. P5 is the reply given by the complainant dt;17.6.2016 to the DRE-2. Ex.P6 is the gift deed which is in the name of this complainant. These are all the documents on which the complainant has relied upon.

21. Here it is very important to note that, in the comments itself the DGO had taken the contention when the Junior Engineer inspected the spot, after receiving the complaint from this complainant, by that time itself the said building construction was completed. Actually it was completed in the year 2013 itself. But, the complainant made false complaint saying that the construction work is still going on. Further it is the DGOs contention that, the property of the complainant itself situates in an unauthorized layout. It is very important to note that, as rightly contended by the DGO, regarding the encroachment, the DGO or any



other officer cannot give any relief to this complainant, that has to be given by any Competent Court itself. So, they had endorsed properly. But, here the charge against this DGO is that, **“even though the DGO had taken permission under Sec. 462 of KMC Act to clear the construction, he has failed to take that action”**. Of course, the complainant was thoroughly cross examined by the Defense Assistant. The answers given by the complainant in the cross examination reveal many things. But, the DGO in his cross examination has clearly admitted as, “ಪುನಃ ದಿನಾಂಕ:09.09.2015 ರಂದು ದೂರುದಾರರ ತಮ್ಮ ಹೊನ್ನಗಂಗಯ್ಯರವರು ಸದರಿ ಮೆ:ಎಆರ್‌ಎ ಡೆವಲಪರ್ಸ್ ರವರು ಅನುಮೋದಿತ ನಕ್ಷೆಗೆ ವಿರುದ್ಧವಾಗಿ ಕಟ್ಟಡವನ್ನು ಕಟ್ಟುತ್ತಿರುವುದರಿಂದ ಅದನ್ನು ತೆರವುಗೊಳಿಸಿ ಎಂದು ದೂರನ್ನು ನೀಡಿದ್ದರು. ಆಗ ಸದರಿ ದೂರಿಗೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ದಿನಾಂಕ: 23.2.2016ರಂದು ನಾನು ಕೆಎಸಿ ಕಾಯ್ದೆ ಕಲಂ 321/1 ಮತ್ತು ಕಲಂ 321/2 ರ ಅಡಿಯಲ್ಲಿ ತಾತ್ಕಾಲಿಕ ಆದೇಶವನ್ನು ಹೊರಡಿಸಿ ಅನಧಿಕೃತ ನಿರ್ಮಾಣದ ಭಾಗಗಳನ್ನು ತೆರವುಗೊಳಿಸಲು ಆದೇಶಿಸಿದ್ದೆ. ತದನಂತರದಲ್ಲಿ ಅವರು ಅನಧಿಕೃತ ನಿರ್ಮಾಣದ ಭಾಗಗಳನ್ನು ತೆರವುಗೊಳಿಸಿರುವುದಿಲ್ಲ. ಆದ್ದರಿಂದ ದಿನಾಂಕ: 1.3.2016ರಂದು ಕಲಂ 321(3)ರ ಅಡಿಯಲ್ಲಿ ಸ್ಥಿರೀಕರಣ ಆದೇಶವನ್ನು ಹೊರಡಿಸಲಾಯಿತು. ದಿನಾಂಕ: 11.3.2016ರಂದು ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರದವರಿಂದ ವ್ಯತಿರಿಕ್ತ ನಿರ್ಮಾಣವನವನವು ತೆರವುಗೊಳಿಸಲು ಆದೇಶವನ್ನು ಪಡೆದುಕೊಂಡಿರುತ್ತೇವೆ ಎನ್ನುವುದು ಸರಿ. ಸದರಿ ಆದೇಶವನ್ನು ಪಡೆದ ನಂತರದ ಆರು ತಿಂಗಳವರೆಗೂ ಆ ಕಟ್ಟಡದ ವ್ಯತಿರಿಕ್ತ ನಿರ್ಮಾಣವನ್ನು ತೆರವುಗೊಳಿಸಿರುವುದಿಲ್ಲ ಎನ್ನುವುದು ಸರಿಯಲ್ಲ. ಸದರಿ ಡೆವಲಪರ್ಸ್‌ರೊಂದಿಗೆ ಶಾಮೀಲಾಗಿ ಕಟ್ಟಡದ ವ್ಯತಿರಿಕ್ತ ನಿರ್ಮಾಣವನವನವು ತೆರವುಗೊಳಿಸದೆ ಕರ್ತವ್ಯಲೋಪ, ಕರ್ತವ್ಯಚ್ಯುತಿ ಎಸಗಿರುತ್ತೇನೆ ಎನ್ನುವುದು ಸರಿಯಲ್ಲ”. Here the complainant’s complaint is also that, the said developers had encroached upon his property and put up the construction without leaving any set-backs as per KMC Act. Of course, regarding the



encroachment, the complainant ought to have go before any jurisdictional civil court. But, regarding set-backs aspect, this DGO himself had admitted in his cross examination that he had passed orders under Sec. 321(1), 321(2) and also 321(3) of KMC Act. These things themselves reveal that, the said construction was not as per the sanctioned plan i.e., without leaving any set-backs. Further, he had also obtained an order under Sec. 462 of KMC Act, on 11.3.2016 itself. Though, this DGO had obtained the said order on 11.3.2016 itself, he had not at all taken any further action for the removal of the illegal construction. His answer in his cross examination as, “ಸದರಿ ಆದೇಶವನ್ನು ಪಡೆದ ನಂತರದ ಆರು ತಿಂಗಳವರೆಗೂ ಆ ಕಟ್ಟಡದ ವ್ಯತಿರಿಕ್ತ ನಿರ್ಮಾಣವನ್ನು ತೆರವುಗೊಳಿಸಿರುವುದಿಲ್ಲ ಎನ್ನುವುದು ಸರಿಯಲ್ಲ” is not at all an acceptable answer as he did not remove the said illegal construction. Further, his argument that, the Asst. Engineer, the Executive Engineer, the Joint Commissioner, the Task Force officials are also equally responsible for such construction, is not at all an acceptable argument as this complaint was lodged against him only and the charge is against him only. i.e., he had not taken any action even though he had obtained an order under Sec. 462 of KMC Act. So, it can be held without any hesitation that, the Disciplinary Authority has successfully proved the charges framed against the DGO and about his dereliction of duty and misconduct. On appreciation of entire oral and documentary evidence I hold that the charge levelled



against the DGO, established beyond all probabilities. Hence, I answer Point No.1 in the ...**affirmative**.

27. Point No. 2 : For the reasons stated above, I proceed to pass the following ;

ORDER

The Disciplinary Authority has proved the charge framed against the DGO., Sri. Ashwath Reddy, Asst. Executive Engineer, Rajarajeshwari Nagar Sub-Division, BBMP, Bangalore.

This report be submitted to the Hon'ble Upalokayukta-I in a sealed cover forthwith.

Dated this the 14th November, 2018



(K.BHAGYA)

Additional Registrar Enquiries-14
Karnataka Lokayukta
Bangalore.

ANNEXURES

Sl. No.	Particulars of Documents
1	Witness examined on behalf of the Disciplinary Authority
	PW-1: Sri. M.G.Gangaiah (Original)
2	Documents marked on behalf of the Disciplinary Authority Ex.P-1 to Ex.P-15
	Ex. P-1: Form No.I (Original)
	Ex. P-2: Form No.II (original).
	Ex. P-3: Complaint (Original)
	Ex. P-4: Letter addressed to AEE Dt:21.12.15 (xerox).
	Ex. P-5: Letter addressed to DRE-2 Dt:17.6.2016 (Original)
	Ex. P-6: Gift Deed Dt:30.9.2015 (xerox).
3	Witness examined on behalf of the DGO.,
	DW-1: Deposition of Sri. Ashwathareddy. K.C., and Cross Examination (Original)
4	Documents marked on behalf of the Disciplinary Authority
	Ex.D-1: Note Sheet & Orders Dt: 12.4.2016, (Xerox).
	Ex.D-2: Note Sheet & Orders Dt: 12.4.2016, (Xerox).

Dated this the 14th November, 2018

(K.BHAGYA)

Additional Registrar Enquiries-14
Karnataka Lokayukta
Bangalore.

