

KARNATAKA LOKAYUKTA

NO:LOK/ARE-9/14-A/ENQ-188/2014

M.S. Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru - 560 001.
Date: 22-9-2016

:: ENQUIRY REPORT ::

Sub: Departmental Enquiry against
G D Jayaram, AEE, Bruhat Bangalore
Mahanagara Palike, Bangalore-reg.,

Ref: 1) Government Order No.UDD 06 MNU 2014
dated 6-2-2014
2) Nomination Order No: LOK/INQ/14-
A/188/2014 Dated: 07/04/2014 of Hon'ble
Upalokayukta-1, Bangalore.

This Departmental Enquiry is initiated against
G D Jayaram (hereinafter referred to as the "Delinquent Government
Official" in short "DGO).

2. In view of the Government Order cited above at reference No.1,
Hon'ble Upalokayukta-I vide order dt: 07-04-2014 cited at reference No.2
has nominated Additional Registrar of Enquiries-6 of Lokayukta as
Enquiry Officer to frame charges and to conduct the enquiry against the
aforesaid DGO. Addl. Registrar of Enquiries-6 has prepared Articles of
charges, statement of imputation of misconduct, list of witnesses
proposed to be examined in support of the charges and list of documents
proposed to be relied on in support of the charges. The copies of the
same were issued to DGO calling upon him to appear before the Enquiry
officer and to submit his written statement of defence.

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3. Later vide Order No. UPLOK-1/DE/2016 dt: 3-8-2016 of Hon'ble Upalokayukta-1 this file has been transferred to ARE-9. The Article of charges framed by the ARE-6 against the DGO is as under:

ANNEXURE NO.I

CHARGE

4 That you DGO – G D Jayaram, the then Asst. Executive Officer, Bruhath Bangalore Mahanagara Palike, Bangalore while discharging your duties:

1. When the builder has not responded to the confirmation order, you DGO sought the assistance of BMTF on 12.8.2011 to demolish the unauthorized construction, but failed to take said action right up to 26.11.2011 when builder obtained order of status quo in O.S N. 8340/2011:

2. According to you DGO, though there is an order of status-quo, builder proceeded with the construction in violation of the Court order that is why he filed complainant to the police on 20.12.2011. But you DGO failed to take steps to get vacated the order of status quo;

3. You DGO though issued the confirmation order on 10.08.2011, because of no immediate action, it gave opportunity to the builder to file O.S. No. 8340/2011 and obtain an order status-quo on 26.11.2011 and thereby you DGO failed to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of a Government Servant and thus you are guilty of misconduct under Rule 3(1)(i) to (iii) of KCS (Conduct)Rules 1966.

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STATEMENT OF IMPUTATION OF MISCONDUCT:

a. An investigation was taken up under Section 9 of the Karnataka Lokayukta Act, on the basis of complaint filed by Smt. Shakira, No.21/1. Ward no.141, 4th Cross, Valmikinagara, Mysore Road, Bangalore-560026 (hereinafter referred to as 'Complainant') against Sri. G.D.Jayaram, Assistant Executive Engineer, Bruhat Bengaluru Mahanagara Palike, Bangalore alleging that the DGO, being a public/Government servant, has committed misconduct.

b. According to the complainant: Abutting her site, Smt. Rezwan Begam started a construction without leaving set back. She built her house abutting the wall of the complainant. The said fact was brought to the notice of the you DGO. But you DGO failed to take action. Hence the complaint.

c. DGO filed his comments mainly contending that the on receipt of the complaint on 12.07.2011, you DGO issued provisional order on 28.07.2011 to the builder Smt. Rezwan Begum. When there was no response, you DGO issued the confirmation order on 10.08.2011. Before you DGO could take further steps, the builder files O.S.No. 8340/2011, obtained the order of status quo on 26.11.2011. Hence you DGO could not taken any action. Hence, prayed to close the complainant.

d. **Consideration of materials on record shows that:**

(i) When the builder has not responded to the confirmation order, you DGO sought the assistance of BMTF on 12.8.2011 to demolish the unauthorized construction, but failed to take said

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action right up to 26.11.2011 when builder obtained order of status quo in O.S N. 8340/2011:

(ii) According to the you DGO, though there is an order of status quo, builder proceeded with the construction in violation of the Court order, that is why he filed complainant to the police on 20.12.2011. But you DGO failed to take steps to get vacated the order of status quo;

(iii) You DGO though issued the confirmation order on 10.08.2011, because of no immediate action, it gave opportunity to the builder to file O.S. No. 8340/2011 and obtain an order status quo on 26.11.2011.

e. The facts supported by the materials on record prima facie show that the DGO, being public/Government servant, has filed to maintain absolute devotion to duty and also acted in the manner unbecoming of a Government servant, and thereby committed misconduct and made himself liable for disciplinary action.

f. Since the said facts and material on record prima-facie show that DGO has committed misconduct as per Rule 3(1) (ii) & (iii) of the KCS (conduct) Rules, 1966, recommendation under section 12(3) of the Karnataka Lokayukta Act, is made of the competent Authority to initiate disciplinary proceedings against the DGO and to entrust the inquiry to this Institution under Rule 14-A of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957.

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4. The Government after considering the recommendation made in the report entrusted the matter of the Hon'ble Upalokayukta to conduct departmental/disciplinary proceedings against the DGO and to submit report. Hence the charge.

5. DGO appeared on 27-8-2014 in pursuance to service of notice on him and he has filed written statement of defence on 15-10-2014.

6. DGO has submitted in his written statement of defence that about the nature of his post as AEE on promotion from the JE. He has taken the specific defence about the passing of the provisional and confirmation order under the provisions of KMC Act, 1976. There is a provision to appeal before KAT u/s 434 of KMC Act, within the prescribed time of 60 days as contemplated u/s 445 of KMC Act, to get an order to demolish the building with the authority, force and help of BMTF u/s 462 of KMC Act, 1976.

7. Soon after passing the order under the provisions of KMC Act he has requested Sri. Venkata Malavaiah, JE and Babu Kumar, Work Inspector, Ward no.141 directing them to implement the orders of the status-quo passed in OS No. 8340/2011 hence, he has empowered his duties diligently without any discrimination.

8. Plea of DGO has been recorded and DGO has pleaded not guilty and he claimed for holding enquiry.

9. On behalf of the Disciplinary Authority, PW-1 Smt. Shakeera w/o Abdul Raheem r/o Bangalore has examined and got marked 4 documents as Ex.P-1 to P-4.

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10. After the closure of evidence on behalf of Disciplinary Authority, DGO examined himself as DW-1 and Ex. D-1 to D-16 are got marked on behalf of him.
11. Arguments were heard on behalf of Disciplinary Authority. Learned Advocate for DGO and the Presenting Officer have submitted their written brief and the same have been considered.
12. After considering the evidence on record, written statement of defence of DGO and written brief submitted on behalf of DGO and arguments on behalf of Disciplinary Authority findings is proved for the following:

REASONS

13. I would like to consider all the three charges together for the reasons they are inter linked to each other.
14. Much before commenting on the merits of the complaint it is necessary to note the complainant-PW-1 had filed her complaint on 12-7-2011 to the DGO stating without leaving any setbacks the construction is going on which has obstructed for easy flow of light and air. On receipt of this complaint, the DGO had got removed the portions which are put up by the constructor. At the instance of JE as stated in his defence statement again the same portions were put up by way of encroachment as such she has lodged the complaint as per Ex. P-4, to the Project Director, BBMP enclosing with correspondent letters to the different authorities. For having not taken any action by the DGO the law forced/compelled her to file complaint before this authority.

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16. The complainant has deposed before this authority as PW-1 stating that she is the owner of the house no. 21/1, 4th cross, Valmikinagara, Bangalore. As stated supra on 12-7-2011(Ex.D-1) she complained to the DGO regarding the unauthorised construction put up by her neighbour Rizwana Begum at site no.7 by violating the sanctioned plan. Initially, the DGO caused to be removed the unauthorized construction but again the said Rizwana Begum started the unauthorized construction for subsequent time, DGO fails to take any action on the said complaint, likely the PW-1 addressed several letters which are enclosed to Ex. P-4 to the various authorities to redress her grievance.

16. Since the facts are admitted is not required to be proved, the written statement in the line of cross examination are to be taken to note.

17. The Disciplinary Authority is to discharge the initial burden of proving the charge restricted to the fact that failure to initiate the timely action by the DGO facilitating the violator to go before the court of law in obtaining an order of status-quo much before it on the basis of note sheets produced by the DGO in Ex. D-2 the notices were issued to the PW-1 as per Ex.D-3 and provisional order u/s 321 (1) of KMC Act is passed.

18. In case of violation the demolition will be made for the illegal construction at the cost of the unauthorized constructor on 28-7-2011 as per Ex. D-4 & D-5. For having not complied the order the DGO has confirmed the order dtd. 10-8-2011, u/s 321(3) of KMC Act as per Ex. D6.

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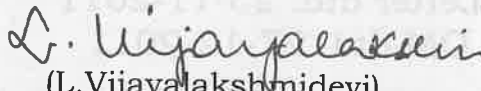
19. Further notice is issued to the unauthorized constructor Rizwana Begum as per Ex. D-7 and she replied as per Ex. D-8 but no action is taken by DGO even though he has confirmed the order. In the meantime he himself speak to the point that he is the one and only person who has to take the appropriate steps for demolition of unauthorized construction by the orders of Commissioner BBMP. Why and for what reason he kept silent all along over a period of filing the suit against him in OS 8340/2011 on the file of Civil Judge, Bangalore dtd. 26-11-2011 and obtained an order of status-quo on the I.A (Ex. D-12). Subsequently DGO has issued OM as per Ex. D-13 and lodged complaint before PSI as per Ex. D-14 and DY. Project Director D-15. DGO has issued OM as per Ex. D-16.

20. These things are quietly admitted by PW-1, on the contrary she has deposed from ever since the order of confirmation passed on 10-8-2011 why and for what reason he waited till the filing of the suit in OS 8340/2011 dtd. 26-11-2011. He reminds with the submission u/s 445 of KMC Act the aggrieved party can prefer an appeal within 60 days from the order u/s 446 of the KMC Act. Why and for what reason DGO is expected to prefer an appeal challenging his own order is not satisfactorily explained. Further such an opportunity is not utilised by the aggrieved one cannot compel her to take the course of action in preferring an appeal. This itself indicates somehow are the other he just wanted to demonstrate these submissions are made on the other hand he has allowed and facilitated the unauthorised constructor to file a suit and get obtained an order of status-quo from the hands of law.

21. Further there are ample powers are vests with the DGO to get suitable order for demolition of unauthorized construction from the Commissioner, BBMP but he has not taken the steps. This is one of the sigma for misconduct of his duty.

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22. Instead of urging the appropriate relief before the Commissioner, BBMP he himself has filed the petition to the BMTF Bangalore who in turn has corresponded the Jt. Commissioner of BBMP through letter, all these attitude of conduct shows he has just favoured Rizwana Begum.
23. On duly appreciating the evidence of the witness examined on behalf of the DA is above suspicion and shows its velocity as reliable.
24. That an act or in-act, an action or inaction, an omission or commission, or remaining neutral, negligence involvement or deliberate or non involvement, collusion or any kind of behaviour with or without reasons with or without mens rea, by a Government Servant resulting in loss, fraud, embezzlement, damage to the property etc., to the Government, public or others or causing agony embarrassment, torture, nuisance etc., to others amounts to misconduct. Misconduct, in its scope, includes both misconduct during the discharge of official duties and misconduct in private life of the Government Servant. Therefore, the act of the misconduct of the DGO for all the charges is proved.
25. Hence this report is submitted to Hon'ble Upalokayukta-1 for further action.


(L. Vijayalakshmi Devi)
Additional Registrar Enquiries-9
Karnataka Lokayukta,
Bangalore.

2/9/2016.

List of witnesses examined on behalf of Disciplinary Authority.

1. PW-1 : Smt. Shakeera w/o Abdul Raheem, r/o Bangalore.

List of Documents marked on behalf of Disciplinary Authority.

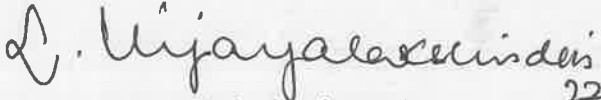
1. Ex.P.1 is the Complaint in Form No.1
2. Ex.P.2 is the Complaint in Form No.2
3. Ex.P.3 is the detailed written complaint
5. Ex.P.4 is the Enclosures to the complaint

List of witnesses examined on behalf of DGO.

DW-1 : G D Jayarm, Rtd. AEE, PWD, Bangalore

List of documents marked on behalf of DGO

- Ex.D-1 : Complaint of PW-1 dtd. 12-7-2011
Ex.D-2 : Copy of the Note sheet
Ex.D-3: The copy of the Notice
Ex.D-4 } Provisional Orders
Ex.D-5 } - " -
Ex.D-6: Confirmation order
Ex.D-7 : Notice dtd.23-8-2011
Ex.D-8: Letter dtd.26-8-2011 of Rizwana Begum
Ex.D-9: Xerox copy of Absolute Sale Deed
Ex.D-10: Note sheet
Ex.D-11 } The copy of order sheet and copy of IA No.1
Ex.D-12 }
Ex.D-13 : OM dtd. 19-12-2011
Ex.D-14 : Letter dtd. 20-12-2011 addressed to
PI, Chamarajapet, Bangalore
Ex.D-15: Letter dtd. 25-11-2011
Ex.D-16 : OM dtd. 27-12-2011


(L. Vijayalakshmi Devi) 22/9/2016
Additional Registrar Enquiries-9
Karnataka Lokayukta,
Bangalore.

GOVERNMENT OF KARNATAKA



KARNATAKA LOKAYUKTA

NO:LOK/ARE-9/14-A/ENQ-188/2014

Multi Storied Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru-560 001,
Date:27/9/2016.

RECOMMENDATION

Sub:- Departmental inquiry against Sri G.D. Jayaram, Asst. Executive Engineer, Bruhat Bengaluru Mahanagara Palike, Bengaluru – Reg.

Ref:- 1) Government order No.ನಅಇ 06 ಎಂಎನ್ಯು 2014
Bengaluru, dated: 6/2/2014

2) Nomination order No.LOK/INQ/14-A/188/2014
dated 7/4/2014 of Hon'ble Upalokayukta-1, State of
Karnataka, Bengaluru

The Government by its Order dated 6/2/2014, initiated disciplinary proceedings against Sri G.D. Jayaram, Asst. Executive Engineer, Bruhat 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.LOK/INQ/14-A/188/2014 dated 7/4/2014 nominated Additional Registrar of Enquiries-6, Karnataka Lokayukta, Bangalore, as the Inquiry Officer to frame charges and to conduct Departmental Inquiry against the DGO for the alleged charge of misconduct, said to have been committed by him. Subsequently, by Order No. UPLOK-1/DE/2016 dated 3/8/2016, this inquiry was transferred to Addl. Registrar of Enquiries-9, Karnataka Lokayukta, Bengaluru.

3. ~~DGO was tried for the following charges:~~

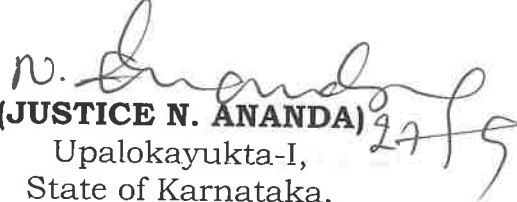
"That you DGO- G.D. Jayaram, the then Asst. Executive Engineer, Bruhat Bangalore Mahanagara Palike, Bangalore, while discharging your duties:

1. When the builder has not responded to the Confirmation Order, you DGO sought the assistance of BMTF on 12/8/2011 to demolish the unauthorized construction, but failed to take said action right up to 26/11/2011 when builder obtained order of status quo in O.S. No. 8340/2011;
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and thereby you DGO failed to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of a Government Servant and thus 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-9) on proper appreciation of oral and documentary evidence has held that, the Disciplinary Authority has proved the above charges against the DGO.
5. On re-consideration of the evidence, 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 the Inquiry Officer.
6. As per the First Oral Statement recorded by Inquiry Officer, the DGO retired from service on 31/5/2015.
7. Having regard to the nature of charges proved against DGO Sri G.D. Jayaram, it is hereby recommended to the Government to impose penalty of **withholding 5% of pension payable to DGO Sri G.D. Jayaram, for a period of 5 years.**
7. Action taken in the matter shall be intimated to this Authority.

Connected records are enclosed herewith.


(JUSTICE N. ANANDA)
Upalokayukta-I,
State of Karnataka,
Bengaluru.

