BEFORE THE ADDITIONAL REGISTRAR, ENQUIRIES-11

KARNATAKA LOKAYUKTA, BENGALURU

ENQUIRY NUMBER: LOK/INQ/14-A/284/2012

ENQUIRY REPORT Dated: 18 /03/2020.

Enquiry Officer: V.G.Bopaiah
Additional Registrar, Enquiries-11
Karnataka Lokayukta, Bengaluru.

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Delinquent Official number 1: Sri. A.M.Rajashekar Murthy (name written by him as Rajashekara Murthy A.M on the note sheet on 07/12/2107).

Discharged duties as Assistant Engineer, Bruhath Bengaluru Mahanagara Palike, Vijayanagara Sub Division, Bengaluru in the year 2010.

Due for retirement on superannuation on 31/03/2025.

Delinquent Official number 2: Sri. K.R. Ramesh

Discharged duties as Assistant Executive Engineer on deputation to Bruhath Bengaluru Mahanagara Palike Bengaluru in the year 2010.

Retired on superannation on 31/11/2019.

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1. Background for initiating the present inquiry against delinquent officials 1 and 2 needs to be stated in brief. One Sri. M. Chandrashekhar (hereinafter will be referred to as "complainant") is the resident of No.11/3, 19th cross,

K.P.Agrahara, Bhuvaneshwarinagara, Bengaluru. According to the complainant, in the year 1979 his father purchased the site bearing survey number 114 situated at 25th cross, K.P. Agrahara, Bhuvaneshwarinagara, Bengaluru from one Mallappa. One Gurulingaiah filed civil suit claiming right and title over the said property. In the year 2001, according to the complainant, judgment is passed ordering that Gurulingaiah has no right over the said property. According to the complainant, Chikkamma alias Mangalamma is the second wife of his father. In the year 2001 father of the complainant executed gift deed in favour of Chikkamma alias Mangalamma to an extent of 21 feet in breadth and 185 feet in length out of the property bearing survey number 114. Father of the complainant died in the year 2009. After the demise of the father of the complainant, the complainant and Chikkamma alias Mangalamma approached the concerned officers and requested for release of the said property from the possession of Gurulingaiah. According to the complainant, Gurulingaiah has not delivered possession of the said property. The complainant has also stated that Gurulingaiah is unauthorisedly constructing the building on the neighbouring property bearing survey number 101/3. According to the complainant, on 10/12/2009 he lodged complaint with Sri. Jagadeesh who then was working as jurisdictional Assistant Executive Engineer. Thereafter, notice has been issued by the officers of Bruhath Bengaluru Mahanagara Palike (in short, "BBMP") calling upon Gurulingaiah to vacate the building. The said notice has been challenged by Gurulingaiah before the Karnataka Appellate Tribunal, Bengaluru. Order to maintain status quo has been

passed by the Karnataka Appellate Tribunal, Bengaluru. Thereafter, Gurulingaiah continued construction of the building. The complainant approached delinquent officials 1 and 2 with a complaint on 08/12/2010 in their office. Delinquent officials 1 and 2 responded that the matter cannot be taken up very urgently and told that in case of payment of a sum of Rs.20,000/- they would look into the matter. Therefore, according to the complainant, he approached the Police Inspector (hereinafter will be referred to as "Investigating Officer") attached to Lokayukta Police Station, City Division, Bengaluru and orally complained against delinquent officials 1 and 2. In order to ascertain the correctness or otherwise of oral complainant of the complainant, the Investigating Officer handed over a voice recorder to the complainant with instructions to approach delinquent official 1 and 2 and to record the conversation. The complainant went to the office of delinquent officials 1 and 2 on 13/12/2010 where delinquent officials 1 was found. Delinquent official 2 was not found in that office. The complainant spoke to delinquent official 1. Delinquent official 1 demanded illegal gratification of Rs.10,000/- and to pay the balance of Rs. 10,000/- on completion of work. The complainant recorded the said conversation in the voice recorder and afterwards appeared before the Investigating Officer on 14/12/2010 and lodged computerised complaint and returned the voice recorder. On the basis of the complaint the Investigating Officer registered case against delinquent officials 1 and 2 in crime number 06/2010 of Lokayukta Police Station, City Division, Bengaluru for the offence punishable under section 7, for the offence defined under

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section 13(1)(d) which is punishable under section 13(2) of The Prevention of Corruption Act, 1988 and submitted FIR to the Court of 23rd Additional City Civil and Sessions Judge, Bengaluru. Thereafter, the Investigating Officer secured shadow witness by name Sri. G.H. Kumar and panch witness by name Sri. H. Raghavendra and informed the purpose for which they are secured. The complainant placed twenty currency notes of denomination of Rs.500/- each before the Investigating Officer. The Investigating Officer got entered the numbers of those notes on a sheet of paper and got applied phenolphthalein powder on those notes. The Investigating Officer got prepared solution with water and sodium carbonate powder and obtained sample of the said solution in a bottle. On the instructions of the Investigating Officer panch witness placed the tainted notes in the right side front pocket of pant of the complainant and immersed fingers of hands in the residual solution. Finger wash of both hands of panch witness turned to pink colour. The Investigating Officer seized the said wash in a bottle. The Investigating Officer got transmitted the contents of voice recorder to two compact discs and got transmitted the contents of voice recorder to two sheet of papers. The Investigating Officer instructed the complainant to approach delinquent officials 1 and 2 and to give the tainted cash to delinquent officials 1 and 2 only in case of demand by delinquent officials 1 and 2. The Investigating Officer also instructed the complainant to wipe the head in case of acceptance of delinquent officials 1 and 2. The Investigating Officer felt that in case the shadow witness accompanies the complainant, then, delinquent officials 1 and 2 may suspect the presence of shadow witness and

therefore, the Investigating Officer instructed the complainant to alone approach the delinquent officials 1 and 2. The Investigating Officer handed over a button camera to the complainant with instructions to keep the same live at the time of approaching delinquent officials 1 and 2. With the said process the Investigating Officer conducted pre-trap mahazar as primitive step of investigation.

2. Subsequent to pre-trap mahazar, the Investigating Officer along with his staff, complainant, shadow witness and panch witness left Lokayukta Police Station, City Division, Bengaluru and on that day at 3.20 P.M reached near house number 688 at 6th main road, Vijayanagara, Bengaluru which is at a little distance from BBMP office, Vijayanagara. Afterwards, the complainant alone entered the office of delinquent official number 2 which is situated in the building at 3rd main road, Vijayanagara, Bengaluru. The chamber of delinquent official number 2 was in the 3rd floor of the building. After the entry of the complainant to the chamber of delinquent official number 2 he noticed the delinquent official number 2 speaking over phone. On seeing the complainant, delinquent official number 2 asked by way of signs to meet after five minutes. Therefore, the complainant came out of the chamber of delinquent official number 2 and arrived at the cabin where delinquent official number 1 was found. The complainant spoke to delinquent official number 1. Delinquent Official number 1 asked the complainant to meet delinquent official number 2. The complainant told delinquent official number 1 that delinquent official number 2 is speaking with somebody over phone. As instructed by delinquent official number 1 the complainant remained in the

cabin for about ten minutes. Afterwards, delinquent official number 1 brought the complainant to the chamber of delinquent official number 2 where the complainant spoke about the work. Delinquent official number 1 asked as to how much is brought for which the complainant responded that cash is brought. Delinquent officials 1 and 2 asked as to how much is brought for which the complainant responded that he has brought a sum of Rs.10,000/-. Delinquent officials 1 and 2 asked about the balance for which the complainant responded that balance would be paid afterwards and saying so offered tainted cash to delinquent official number 2. Delinquent official number 2 instructed by way signs to hand over cash to delinquent official number 1. In response to the said instruction the complainant gave tainted cash to delinquent official number 1. Delinquent official number 1 accepted the tainted cash with right hand after counting with both hands placed the same in the right side pocket of pant. It was then 04.10 P.M. Afterwards, The complainant came out of the said office and wiped the head. In response to the said signal, the Investigating Officer along with his staff, complainant, shadow witness and panch witness entered the said office.

3. After the entry of the Investigating Officer, the complainant pointed out delinquent officials 1 and 2 and told that on the instructions of delinquent official number 2 he gave tainted cash to delinquent official number 1. The Investigating Officer disclosed his identity to delinquent officials 1 and 2 and informed the purpose of his arrival. The Investigating Officer got prepared solution with water and sodium carbonate powder in two containers and obtained sample of the said

solution in a bottle. On the instructions of the Investigating officer delinquent official number 1 immersed fingers of right hand in the residual solution placed in a container and immersed fingers of left hand in the residual solution placed in another container. Finger wash of both hands of delinquent official number 1 turned to pink colour. The Investigating Officer seized those wash in separate bottles. On being questioned by the Investigating Officer about tainted cash, delinquent official number 1 told that a sum of Rs.5,000/- is in the right side front pocket of pant and that a sum of Rs.5,000/- is in the pocket of shirt and that out of the said amount a sum of Rs.5,000/- is towards the share of delinquent official number 2. On the instructions of the Investigating Officer the shadow witness lifted tainted cash of Rs.5,000/- from the right side front pocket of pant of delinquent official number 1 and lifted tainted cash of Rs.5,000/- from the left side pocket of shirt of delinquent official number 1. The Investigating Officer provided alternate pant and shirt to delinquent official number 1 and seized the pant and shirt of delinquent official number 1. On being questioned by the Investigating Officer about the file of the complainant, delinquent official number 1 produced the file. The Investigating Officer obtained xerox copies of forty three sheets of the said file and after getting those sheets attested seized those sheets. The Investigating Officer obtained two xerox sheets of the attendance register maintained in the office of delinquent officials 1 and 2 and after getting those sheets attested seized those sheets. The Investigating Officer arrested delinquent officials 1 and 2. The Investigating Officer found that the office delinquent officials 1 and 2 is not suitable for

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further proceedings brought delinquent officials 1 and 2 to Lokayukta Police Station, City Division, Bengaluru along with his staff, complainant, shadow witness and panch witness. The Investigating Officer secured the digital camera from the complainant and got transmitted the contents of the same to compact disc and also got transmitted those contents to four sheet of papers. On being questioned by the Investigating Officer delinquent officials 1 and 2 gave statement in writing which were not found acceptable. The Investigating Officer secured one Sri. S.D. Nagaraju who then was working as Executive Engineer, BBMP, Vijayanagara Division, Bengaluru who gave statement in writing before the Investigating Officer touching the contents of video proceedings. On the instructions of the Investigating Officer, staff of Investigating Officer produced delinquent officials 1 and 2 in the Court of 23rd Additional City Civil and Sessions Judge, Bengaluru. During investigation the Investigating Officer transmitted the seized items to the Chemical Examiner attached to Public Health Institute, Bengaluru and obtained report from the Assistant Chemical Examiner, Public Health Institute, Bengaluru. The Investigating Officer secured cell phone call details of the complainant, delinquent officials 1 and 2. On completion of investigation, the Investigating officer obtained sanction for prosecution of delinquent officials 1 and 2 and thereafter submitted charge sheet in the Court of 23rd Additional City Civil and Sessions Judge, Bengaluru.

4. On the basis of the report of the Additional Director General of Police, Karnataka Lokayukta, Bengaluru along with the Investigation papers made available by the Police Inspector attached to Karnataka Lokayukta, City Division, Bengaluru,

Hon'ble Upalokayukta, Karnataka, in exercise of the powers conferred upon under section 7(2) of The Karnataka Lokayukta Act, 1984 probed into the matter which, on the basis of records prima facie unearthed that delinquent official number 1 has committed misconduct within the purview of Rule 3(1) of The Karnataka Civil Services (Conduct) Rules, 1966 and that delinquent official number 2 has committed misconduct within the purview of Rule 3(1) of The Karnataka Civil Services (Conduct) Rules, 1966 and also under Rule 91(a) of Cadre and Recruitment Rules of Karnataka Land Army Corporation Limited and accordingly, in exercise of the powers conferred upon under section 12(3) of The Karnataka Lokayukta Act, 1984 recommended the competent authority to initiate disciplinary proceedings against delinquent officials 1 and 2 and to entrust the inquiry to the Hon'ble Upalokayukta, Karnataka under Rule 14-A of The Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957.

5. Subsequent to the report dated 20/01/2012 under section 12(3) of The Karnataka Lokayukta Act, 1984, Government Order bearing number ಲೋಇ 44 ಸೇಇವಿ 2012, ಬೆಂಗಳೂರು, ದಿನಾಂಕ 12/03/2012 has been issued by the Under Secretary to the Government of Karnataka, Department of Public Works, Port and Inland Water Transport (Services-C) entrusting the inquiry against delinquent official number 1 to the Hon'ble Upalokayukta, Karnataka under Rule 14-A of The Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957.

6. Subsequent to the report dated 20/01/2012 under section 12(3) of The Karnataka Lokayukta Act, 1984 Order bearing number ಕೆಆರ್‌ಐಡಿಎಲ್/ಇಎಸ್‌ಟಿ/ಸಿಆರ್-5/2012-13 ದಿನಾಂಕ 22/06/2012

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has been issued by the Managing Director, Karnataka Rural Infrastructure Development Limited entrusting the inquiry against delinquent official number 2 to the Hon'ble Upalokayukta, Karnataka under Rule 14-A of The Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 for the misconduct committed by delinquent official number 2 under Rule 3(1)(i) and (iii) of The Karnataka Civil Services (Conduct) Rules,1966.

7. Subsequent to the Order ಟೋಇ 44 ಸೇಇವಿ 2012, ಬೆಂಗಳೂರು, ದಿನಾಂಕ 12/03/2012 and the Order ಕೆಆರ್‌ಐಡಿಎಲ್/ಇಎಸ್‌ಟಿ/ಸಿಆರ್-5/2012-13 ದಿನಾಂಕ 22/06/2012, Order bearing number LOK/INQ/14-A/284/2012 Bengaluru dated 02/07/2012 has been ordered by the Hon'ble Upalokayukta-1, Karnataka nominating the Additional Registrar, Enquiries-4, Karnataka Lokayukta, Bengaluru as Inquiry Officer to frame charges and to conduct departmental inquiry against delinquent officials 1 and 2.

8. Articles of charge dated 29/11/2012 at Annexure-1 which includes statement of imputation of misconduct at Annexure-II framed by the then Additional Registrar, Enquiries-4, Karnataka Lokayukta, Bengaluru is the following:

"ANNEXURE-1

CHARGE:

2. That, you DGO-1, Sri A.M.Rajashekar and DGO-2, Sri K.R.Ramesh while working as Assistant Engineer and Assistant Executive Engineer respectively at Vijayanagar sub-division of B.B.M.P. in Bangalore, the complainant namely Sri Chandrashekar s/o Late Mariyappa of

Bhuvaneshwarinagar in Bangalore approached you requesting to take necessary steps to evict Sri Gurulingaiah, who has put up illegal construction in site measuring 21'x185' of Sy.No.114 situated at 25th Cross Road of Bhuvaneshwarinagar which was purchased by his father and gifted in favour of his step mother smt. Chikkamma @ Mangalamma and then both of you DGOs 1 & 2 asked the complainant to pay bribe of ₹ 20,000/- and on 14/12/2010, you DGO-1 received bribe of ₹10,000/- for yourself and on behalf of you DGO-2 from the complainant to show official favour, failing to maintain absolute integrity and devotion to duty, the act of which was un-becoming of Government Servant and thereby committed mis-conduct as enumerated U/R 3(1)(i) to (iii) of Karnataka Civil Service (Conduct) Rules 1966.

ANNEXURE-11

STATEMENT OF IMPUTATIONS OF MISCONDUCT

Sri Chandrashekar s/o Late Mariyappa residing at No.11/13, 19th cross, K.P. Agrahara, Bhuvaneswarinagar, Bangalore-560 023 (herein after referred to as 'complainant') submitted his complaint stating that, a site measuring 21' X 185' of Sy.No.114 situated in 25th cross road of Bhuvaneshwarinagar at K.P. Agrahara in Bangalore city which was purchased by his father was gifted to his step-mother i.e., second wife viz., Smt. Chikkamma @ Mangalamma. After Sri Gurulingaiah's claim was negativated by the Hon'ble High Court in the eyar 2001. Thereafter, his father

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Mariyappa expired in the year 2009. The said Sri Gurulingaiah had not vacated his illegal possession of that site. So, in that connection and also in connection with putting a banner in front of illegal construction made by said Sri Gurulingaiah, he approached B.B.M.P., office for 2-3 months requesting to take necessary steps to evict said Sri Gurulingaiaha from said site in Sy.no.114. Inspite of that, his request was not given any heed by the DGOs without any justificable cause or reason. Further, on 08-12-2010, when the complainant approached the DGO-1 and DGO-2 requesting about his work, DGO-1 and DGO-2 put forward demand of bribe of Rs. 20,000/- and directed to pay Rs. 10,000/- before attending to the complainant's work and further to pay balance bribe of Rs.10,000/- after completion of complainant's work. The complainant was not willing to pay bribe to DGO-1 and DGO-2 and therefore, he approached Lokayukta Police Inspector of Bangalore City (herein after referred to as the Investigating Officer, for short, "the I.O.") and lodged a complaint. The I.O. registered the complaint in Cr.no.61/2010 for the offences punishable U/S7, 13(1)(d) R/W 13(2) of the Prevention of Corruption Act 1988. The I.O. took up investigation and on 14-12-2010 the I.O. trapped the DGO-1 while receiving tainted amount of Rs. 10,000/- for himself and also for DGO-2 at the office of the DGOs i.e. B.B.M.P., Bangalore. The I.O. seized the tainted amount from the DGO-1 under mahazar after following post-trap formalities. The DGOs failed to give any satisfactory or convincing

reply about possession of the said tainted amount and the I.O. recorded the statement of the complainant and panch witnesses. The record of investigation and the materials collected by the I.O. showed that, the DGOs have committed mis-conduct failing to maintain absolute integrity and devotion to duty and acted in a manner un-becoming of Government Servants. As the materials on record showed prima facie case about the DGOs receiving bribe for discharging official duty as a public servants a suo-moto investigation was taken up U/S 7(2) of Karnataka Lokayukta Act against the DGOs. An observation note was sent to the DGOs calling for his explanation. The replies given by the DGOs were not convincing and not satisfactory to drop the proceedings. As there was prima facie case showing that the DGOs committed mis-conduct as per rule 3(1) of KCS (Conduct) Rules, 1966, a report U.S 12(3) of the Karnataka Lokayukta Act was sent to the Competent Authority with recommendation to initiate disciplinary proceedings against the DGOs and to entrust the departmental enquiry to the Hon'ble Upalokayukta U/R 14-A of K.C.S. (CCA) Rules. Accordingly, the Competent Authority initiated disciplinary proceedings and entrusted the enquiry to the Hon'ble Upalokayukta. Hence, the charge."

9. In response to due service of articles of charge, delinquent officials 1 and 2 have entered appearance before the then Additional Registrar, Enquiries-4, Karnataka Lokayukta, Bengaluru on 08/01/2013. In the course of first oral

statement of delinquent officials 1 and 2 recorded on 08/01/2013 they pleaded not guilty. Despite opportunity delinquent officials 1 and 2 have not filed written statement. Subsequently, delinquent officials 1 and 2 engaged Advocate for their defence.

10. As per Order number LOK/INQ/14-A/2014 dated 14/03/2014 of Hon'ble Upalokayuikta-1, Karnataka this file has been transferred to Additional Registrar, Enquiries-5, Karnataka Lokayukta, Bengaluru.

11. The disciplinary authority has examined the complainant as PW1 before the then Additional Registrar, Enquiries-5, Karnataka Lokayukta, Bengaluru. During evidence of the complainant recorded by the then Additional Registrar, Enquiries-5, Karnataka Lokayukta, Bengaluru attested copy of the complaint dated 14/12/2010 in two sheets of the complainant is marked as per Ex P1, signature of the complainant found on Ex P1 is marked as per Ex P1(a), attested copy of pre-trap mahazar dated 14/12/2010 in six sheets is marked as per Ex P2, signature of the complainant found on Ex P2 is marked as per Ex P2(a), attested copy of trap mahazar dated 14/12/2010 in ten sheets is marked as per Ex P3, signature of the complainant found on sheet number 2 of Ex P3 is marked as per Ex P3(a), forty three attested sheets of the file pertaining to the complainant as per Ex P4. Upon perusal of the evidence recorded by then Additional Registrar, Enquiries-5, Karnataka Lokayukta, Bengaluru it is seen that Ex P4 total consists of forty five sheets but it is seen that last two sheets of Ex P4 are the attested sheets of the attendance register maintained in the office of delinquent officials 1 and 2.

12. As per Order number UPLOK-1/DE/2016 Bengaluru dated 03/08/2016 of Hon'ble Upalokayukta-1, Karnataka this file has been transferred to this section i.e., Additional Registrar, Enquiries-11, Karnataka Lokayukta, Bengaluru.

13. Thereafter, the complainant has been secured and subjected to cross examination. In addition to the evidence of the complainant, the disciplinary authority has examined the shadow witness as PW2 and the Investigating Officer as PW3. During evidence of PW2 a single attested sheet containing the numbers of currency notes is marked as per Ex P5, attested copy of statement in writing dated 14/12/2010 in a single sheet of delinquent official number 1 given before PW3 is marked as per Ex P6, attested copy of statement in writing dated 14/12/2010 in a single sheet given before PW3 is marked as per Ex P7, attested copy of statement in writing dated 14/12/2010 in a single sheet of Sri. S,D. Nagaraju who then was working as Executive Engineer, BBMP, Vijayanagara Division, Bengaluru is marked as per Ex P8, two attested sheets of transcripted version of the contents of digital voice recorder is marked as per Ex P9, four attested sheets of the transcripted version of the contents of spy camera is marked as per Ex P10. During evidence of PW3 attested copy of FIR dated 14/12/2010 in a single sheet in crime number 61/2010 of Lokayukta Police Station, City Division, Bengaluru is marked as per Ex P11, attested copy of report dated 28/12/2010 in a single sheet of Assistant Chemical Examiner, Public Health Institute, Bengaluru is marked as per Ex P12, attested copy of cell phone call details consisting of fourteen sheets is marked as per Ex P13.

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14. In the course of second oral statement of delinquent officials 1 and 2 recorded on 25/02/2019 they have stated that they would get examined themselves as defence witness and that they do not intend to examine defence witness. On 31/08/2019 Advocate Sri. R.Sathish has filed memo stating that delinquent officials 1 and 2 do not intend to adduce defence evidence. Delinquent officials 1 and 2 have not adduced defence evidence.

15. Incriminating circumstances which appeared against delinquent officials 1 and 2 in the evidence of PWs 1 to 3 are put to them by way of questionnaire and their answers are recorded. Delinquent officials 1 and 2 have denied the incriminating circumstances which appeared against them in the evidence of PWs 1 to 3. Regarding statement in writing of delinquent officials 1 and 2 given before PW3 soon after trap they have contended that their statements are obtained by force. Delinquent official 1 has contended that work of the complainant was not pending with him and that case was pending in the Court. He has contended that he neither demanded nor accepted illegal gratification. He has contended that false complaint has been lodged against him. Delinquent official 2 has contended that work of the complainant was not pending with him and that case in respect of the building was pending in the Court. He has contended that he neither demanded nor accepted illegal gratification.

16. In the course of defence statement signed by delinquent officials 1 and 2 and also by the advocate for delinquent officials of 1 and 2 filed on 31/01/2020 it is stated that articles of charge framed is without authority of law. It is stated that Hon'ble Upalokayukta, Karnataka was not

conferred upon with the powers of recommendation and therefore the Government order is bad in law and as such charge framed against delinquent officials is bad in law. It is contended that the jurisdictional Civil Court has passed interim order and as such work of complainant was not pending with delinquent officials 1 and 2 and therefore demand and acceptance of illegal gratification does not arise. It is contended that delinquent officials 1 and 2 have neither demanded nor accepted illegal gratification. Delinquent officials 1 and 2 have denied the alleged misconduct.

17. In the course of written argument filed by the Presenting Officer on 09/01/2020 she has referred to articles of charge and evidence on record. With reference to evidence on record it is contended that nothing worthy is found to disbelieve the evidence of PWs 1 to 3 and that evidence of PWs 1 to 3 and also Exs P9 and P10 establishes the charge.

18. In the course of written argument signed by delinquent officials 1 and 2 and also their Advocate filed on 20/02/2020 reference is made to the articles of charge and evidence on record. It is contended that official work of the complainant was not pending with delinquent officials 1 and 2. It is contended that the complainant and Lokayukta Police staff joined hands and concocted false case. It is contended that PWs 1 to 3 have not deposed in support of the case of the disciplinary authority. It is contended that during examination-in-chief and also during cross examination PWs 1 to 3 have not stated anything touching demand and acceptance of illegal gratification. Referring to the evidence of PWs 1 to 3 at length it is sought to contend that their evidence is of no support to establish the charge. It is

contended that statement in writing of delinquent officials 1 and 2 are obtained on the day of trap by force. It is contended that Ex P8 does not point out towards the alleged complicity of delinquent officials 1 and 2. It is contended that PW3 has not conducted investigation touching misconduct. Thus, it is sought to contend that the alleged misconduct is not established.

19. Office copy of the office order dated 18/06/2010 of the Assistant Executive Engineer, BBMP, Vijayanagara Sub-Division in a single sheet, original later dated 13/02/2020 in a single sheet of the Assistant Executive Engineer, BBMP Sub-Division, Vijayanagara addressed to Advocate Sri. R. Sathish, office copy of the letter dated 13/02/2020 of Advocate Sri. R. Sathish addressed to the Assistant Executive Engineer, BBMP Sub- Division, Vijayanagara, Bengaluru, certified copy of property form in five sheets dated 14/12/2010 in crime number 61/2010, certified copy of pre-trap mahazar dated 14/12/2010 in six sheets, certified copy of trap mahazar dated 14/1/2010 in ten sheets, certified copy of the order dated 20/11/2017 in eight sheets in Special C.C. number 114/2011 on the file of 76th Additional City Civil and Sessions Judge(CCH-77) Bengaluru and xerox copy of sketch in a single sheet are enclosed to the written argument of delinquent officials 1 and 2. On 07/03/2010 memo is filed by Advocate for delinquent officials 1 and 2 enclosing the original letter dated 05/03/2020 of the Assistant Executive Engineer, BBMP, Vijayanagara Sub-Division, Bengaluru addressed to delinquent official number 2 and attested three sheets of the attendance register maintained in the office delinquent officials for the months of October, November and December 2010.

20. In tune with the articles of charge, point which arises for consideration is :

Whether it stands established that in order to evict Sri. Gurulingaiah from the building constructed by Gurulingaiah on the site bearing survey number 114 measuring 21 feet in breadth and 185 feet in length situated at 25th cross road, K.P.Agrahara, Bhuvaneshwarinagara, Bengaluru delinquent official number 1 while discharging duties as Asistant Engineer attached to Bruhath Bengaluru Mahanagara Palike, Vijayanagara Sub-Division, Bengaluru in the year 2010 and delinquent official number 2 while discharging duties as Assistant Executive Engineer attached to Bruhath Bengaluru Mahanagara Palike, Vijayanagara Sub-Division, Bengaluru demanded illegal gratification of Rs.20,000/- i.e., at the rate of Rs.10,000/- each towards their share from the complainant and thereafter, on 14/10/2010 between 3.20 P.M and 04.10 P.M delinquent officials 1 and 2 demanded illegal gratification from the complainant in the office of delinquent officials 1 and 2 situated in the 3rd floor of the building at 3rd main road, Vijayanagara, Bengaluru and on the instructions of delinquent official number 2, delinquent official number 1 accepted illegal gratification of Rs.10,000/- from the complainant and during investigation conducted by the Police Inspector attached to Lokayukta Police Station, City Division, Bengaluru in crime number 6/2010 of Lokayukta Police Station, City Division, Bengaluru delinquent officials 1 and 2 failed to offer satisfactory explanation for possession of tainted cash of Rs.10,000/- possessed by delinquent official number 1 in the office of Bruhath Bengaluru Mahanagara Palike situated in the 3rd floor of the building at 3rd main road,

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Vijayanagara, Bengaluru and thereby delinquent officials 1 and 2 are guilty of misconduct within the purview of Rule 3(1)(i) to (iii) of The Karnataka Civil Services(Conduct) Rules, 1966?

21. Evidence of the complainant that Gurulingaiah constructed the house on the property which was gifted by his father to his step mother is not under challenge. It is in the evidence of the complainant that Sri. Jagadeesh who then was the jurisdictional Engineer informed Gurulingaiah to remove the building but despite the same Gurulingaiah has not removed the building is not under challenge. His evidence that even delinquent officials 1 and 2 have not initiated action for eviction of Gurulingaiah is also not under challenge.

22. It is in the evidence of the complainant that in order to dismantle the encroached portion of the building delinquent officials 1 and 2 demanded a sum of Rs.20,000/- and that he agreed for payment of a sum of Rs.10,000/- and thereafter he informed the matter to Lokayukta Police. It is in his evidence that a voice recorder has been given to him by Lokayukta Police staff with instructions to approach delinquent official number 1 and to record the conversation. It is in his evidence that he recorded the conversation between him and delinquent official number 1 and afterwards he filed complaint the attested copy of which is Ex P1. Evidence of the complainant that he lodged complaint is not under challenge.

23. During evidence PW3 who in the Investigating Officer has stated that on 14/12/2010 the complainant appeared before him and handed over a voice recorder and lodged complaint. This portion of his evidence is not under challenge. His evidence that on the basis of complaint he registered case

against delinquent officials 1 and 2 in crime number 06/2010 of Lokayukta Police Station, City Division, Bengaluru for the offence punishable under section 7, for the offence defined under section 13(1)(d) which is punishable under section 13(2) of The Prevention of Corruption Act, 1988 is not under challenge. During cross examination it is brought out that on 13/12/2010 the complainant orally complained against delinquent officials 1 and 2 and that except handing over the voice recorder he has not reduced the oral complaint into writing. It is in the cross examination of PW3 that since he had to ascertain the correctness of otherwise of the oral allegations of the complainant he has not reduced the oral complaint into writing and equally has not registered case against delinquent officials 1 and 2 on 13/12/2010. The said answer of PW3 is convincing.

24. It is in the evidence of the complainant that shadow witness and panch witness are secured by Lokayukta Police staff. This portion of his evidence is not under challenge. He has stated that he placed twenty currency notes of denomination of Rs.500/- each in Lokayukta Police Station, City Division, Bengaluru. It is brought out during cross examination of the complainant that he was not informed by Lokayukta Police staff to place cash. The complainant stated during cross examination that personal cash was with him on 14/12/2010. Though it is brought out during cross examination of the complainant that PW3 (Investigating Officer) handed over cash of Rs.1,000/- to him it is not brought out during cross examination of PW3 that PW3 handed over cash of Rs.10,000/- and therefore evidence of the complainant during his cross examination that PW3 gave

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cash of Rs.10,000/- will not discredit his testimony. During re-examination of the complainant it is brought out by the Presenting Officer that he received cheque for Rs.10,000/- from Lokayukta Police Station and that he encashed the cheque and that he has not returned the said amount. The said clarification during re-examination has removed the ambiguity touching the said cash. Since the complainant has received cheque of Rs.10,000/- and encashed the said cheque it needs to be held that the said amount is the personal cash of the complainant. It is in the evidence of the complainant that after application of phenolphthalein powder on the currency notes PW2 placed those notes in the right side pocket of his pant and thereafter PW2 washed hands in the solution and consequently the said wash turned to pink colour. Above portion of evidence of the complainant has remained unchallenged. He has stated that with the above process pre-trap mahazar has been conducted. Ex P2 is the attested copy of pre-trap mahazar.

25. It is in the evidence of PW2 that he along with the panch witness H.Raghavendra had been to Lokayukta Police Station, Bengaluru where he came to know that complaint was lodged by the complainant alleging demand of illegal gratification by BBMP officers. It is his evidence that a voice recorder was played in his presence in which voice touching demand for illegal gratification was found recorded. It is in his evidence that the complainant placed twenty currency notes of denomination of Rs.500/- each and that numbers of those notes are noted on a sheet of paper. Ex P5 is the attested copy of the said sheet of paper. It is in his evidence that after application of phenolphthalein powder on those notes the

panch witness placed those notes in the right side front pocket of pant of the complainant. It is in his evidence that Lokayukta Police staff prepared solution with water and sodium carbonate powder and after obtaining sample of the said solution washed fingers of hands of the panch witness in the residual solution. PW2 has stated that finger wash of hands of panch witness turned to pink colour. It is in his evidence that Lokayukta Police staff handed over a voice recorder and button camera to the complainant and with the said process pre-trap mahazar has been conducted. Evidence of PW2 touching his appearance before the Investigating Officer in Lokayukta Police Station, City Division, Bengaluru though has been attempted to be assailed during his cross examination his evidence touching his appearance before the Investigating Officer in Lokayukta Police Station, City Division, Bengaluru has not been challenged. Entire evidence of PW2 touching the proceedings of pre-trap mahazar has remained unchallenged.

26. Evidence of PW3 who the Investigating officer would show that subsequent to submission FIR he secured PW2 and panch witness to Lokayukta Police Station, City Division, Bengaluru. It is in his evidence that the complainant placed twenty currency notes of denomination of Rs.500/- each and that he got entered numbers of those notes on a sheet of paper. It is in his evidence that he got applied phenolphthalein powder on those notes and that he got prepared solution with water and sodium carbonate powder and obtained sample of the said solution in a bottle. He has stated that on his instructions the panch witness placed the tainted cash in the left side front pocket of pant of the

complainant and thereafter on his instructions the panch witness washed fingers of hands in the residual solution. He has stated that the said finger wash of hands of panch witness turned to pink colour and that he seized the said wash in a bottle. He has stated that he got transmitted the contents of voice recorder to two compact discs and also got transmitted the contents of the voice recorder to two sheet of papers. He has stated that he instructed the complainant to approach delinquent officials 1 and 2 and to give the tainted cash only in case of demand by delinquent officials. He has stated that he also instructed the complainant to give signal by wiping the head in case of acceptance of tainted cash by delinquent officials. He has stated that he felt that in case the shadow witness accompanies the complainant, then, delinquent officials may suspect the presence of shadow witness and therefore he instructed the complainant to approach delinquent officials 1 and 2 alone. He has stated that he handed over a button camera to the complainant with the instructions to keep the same live at the time of approaching delinquent officials 1 and 2. He has stated that with above process he conducted pre-trap mahazar. Entire evidence of PW3 touching the proceedings of pre-trap mahazar has remained unchallenged. On the strength of evidence of PWs 1 to 3 it needs to be expressed that PW3 conducted pre-trap mahazar as primitive step of investigation.

27. In the course of evidence the complainant has stated that after he approached delinquent officials 1 and 2 delinquent officials 1 and 2 have not initiated any action for removal of unauthorised area of construction and that delinquent officials 1 and 2 demanded illegal gratification of Rs.20,000/- for

removal of the unauthorised portion of unauthorised construction. This portion of evidence of the complainant has remained unchallenged and therefore the said portion of his evidence needs acceptance which unerringly points out that delinquent officials 1 and 2 demanded illegal gratification of Rs.20.000/-. Evidence of the complainant that subsequent to demand for illegal gratification of Rs.20,000/- he agreed for payment of Rs.10,000/- is not under challenge and therefore the said portion of his evidence needs acceptance.

28. Evidence of the complainant would show that earlier to the day of trap he approached delinquent official number 1 with the voice recorder and recorded the conversation between him and delinquent official number 1. It is in the evidence of PW3 that earlier to registration of the complaint he handed over voice recorder to the complainant.

29. During evidence the complainant has stated that subsequent to pre-trap mahazar he went to the office of delinquent officials 1 and 2 where delinquent officials 1 and 2 were found. It is in his evidence that at the time when he offered cash to delinquent official number 2 he was asked by delinquent official number 2 to give cash to delinquent official number 1 and therefore he gave the tainted cash to delinquent official number 1 and afterwards gave signal. Whether this portion of evidence of the complainant needs to be accepted or not has to be ascertained by focusing attention to his cross examination.

30. During evidence the complainant has stated that he alone had been to BBMP office. During cross examination the complainant has stated that delinquent official number 1 has not demanded accepted cash of Rs.10,000/-. Evidence

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of the complainant that after he went to the office of delinquent officials 1 and 2 he offered cash to delinquent official number 2 and at that time delinquent official number 2 instructed to pay the said cash to delinquent official number 1 by name Rajashekharamurthy is not under challenge. In this background evidence of the complainant that when he offered cash to delinquent official number 2 he was instructed to pay cash to delinquent official number 1 needs acceptance. The complainant has been examined on 20/05/2015 before the then Additional Registrar Enquiries-5, Karnataka Lokayukta, Bengaluru. It is seen in the deposition of the complainant that on 20/05/2015 delinquent officials 1 and 2 remained absent and they were already placed exparte. Records would show that order placing delinquent officials exparte has been set aside on 08/06/2016 and summons has been ordered for cross examination of PW1. On 28/04/2017 delinquent officials 1 and 2 remained absent. The complainant equally remained absent. Thereafter, at 12.50 P.M on 28/04/2017 the complainant appeared and he was informed to appear on 24/07/2017 for the reason that the matter was already posted to 24/07/2017. On 24/07/2017 the complainant remained absent and therefore bailable warrant has been ordered. On 23/05/2018 PW1 remained absent. Thereafter, bailable warrant has been issued against PW1. PW1 appeared on 02/08/2018 and subjected to cross examination. In the decision in Vinod Kumar V/S State of Punjab reported in (2015) 3 Supreme Court cases page 220 the complainant who was examined by the trial Court as PW5 has not supported and therefore has been subjected to cross examination. PW7 who was examined in the trial Court has

supported the prosecution case during examination-in-chief and resiled examination-in-chief during cross examination. Law is laid down in the said decision by the Hon'ble Supreme Court that testimony of hostile witness cannot be brushed aside. As observed by the Hon'ble Supreme Court in paragraph number 51 of the judgment examination-in-chief of PW7 in the trial Court was conducted on 03/09/1999 and subjected to cross examination on 25/05/2001. Relevant portion of paragraph number 51 of the judgment of the Hon'ble Supreme Court reads:

> "51. It is necessary, though painful, to note that PW7 was examined- in –chief on 30-9-1999 and was cross examined on 25-5-2001, almost after 1 year and 8 months. The delay in said cross examination, as we have stated earlier had given enough time for prevarication due to many a reason....."

Evidence of the complainant as found during his cross examination that the complainant has not demanded and accepted illegal gratification from delinquent official number 1 would lead to draw inference that after issue of summons for the purpose of cross examination he must have thought of resiling from his earlier version as stated during his examination-in-chief and therefore his answer during cross examination that delinquent official number 1 has not demanded and accepted illegal gratification will not lead to hold that his evidence during his examination-in-chief that he paid cash to delinquent official number 1 needs to be

discarded. In other words, his evidence during his examination-in-chief that on the instructions of delinquent official number 2 he gave cash to delinquent official number 1 cannot be disbelieved only on the basis of his answer during his cross examination as stated earlier.

31. During evidence the complainant has stated that in response to his signal Lokayukta Police staff entered the office of delinquent officials where he expressed before Lokayukta Police staff that he paid cash to delinquent official number 1. His evidence that he told Lokayukta Police staff that he paid amount to delinquent official number 1 has remained unchallenged and therefore the same needs acceptance which portion of his evidence incriminates delinquent official number 1. His evidence that tainted cash of Rs.5,000/- was taken out by PW2 from the pocket of shirt of delinquent official number 1 is not under serious challenge. His evidence that cash of Rs.5,000/- was found in the hip pocket of pant of delinquent official number 1 is not under challenge. It thus stands established that delinquent official number 1 was found possessed of tainted cash of Rs.5,000/- in the left side pocket of his shirt and tainted cash of Rs.5,000/- was found in the pocket of pant. Evidence of the complainant that PW1 was asked by Lokayukta Police staff and came to know that cash of Rs.10,000/- was divided into two parts at the rate Rs.5,000/- each is not under challenge. Likewise, evidence of the complainant that delinquent official number 1 told that cash of Rs.5,000/- was to be paid to delinquent official number 2 is equally not under challenge which establishes acceptance of a sum of Rs.5,000/- by delinquent official

number 1 towards the share of delinquent official number 2 and acceptance of a sum of Rs.5,000/- by delinquent official number 1 towards his share. Evidence of the complainant that amount was seized by Lokayukta Police staff is not under challenge. His evidence that finger wash of hands of delinquent official number 1 turned to pink colour is not under challenge. Likewise, evidence of complainant that shirt of delinquent official number 1 is seized and that documents are also seized is not under challenge. He has stated during his evidence that trap mahazar has been drawn.

32. During cross examination the complainant though has stated that he has not ventured upon to vacate the stay order which was ordered by the Hon'ble High Court the fact remains that delinquent officials 1 and 2 have demanded cash of Rs.20,000/- from the complainant making the complainant to believe that work of the complainant would be attended. This aspect leads to draw conclusion that delinquent officials 1 and 2 have told the complainant that favour will be extended in case of payment of a sum of Rs.20,000/-. Though it is brought out during cross examination of the complainant that he approached Lokayukta Police staff through his friends names of his friends is not brought out during his cross examination. Though it is brought out during cross examination of the complainant that earlier to lodging of complaint he visited Lokayukta Police station for about five or six times this portion of his answer is not in conformity with his evidence during his examination-in-chief. His answer during cross examination that earlier to lodging of the complaint before PW3 he had not met delinquent officials 1 and 2 is also not in conformity with his evidence during his

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examination-in-chief. His answer during his cross examination that Lokayukta Police staff has fixed the date 14/12/2010 to attend his work cannot be believed for the reason that nothing is elicited during cross examination of PW3 that he had fixed the said date. His answer during cross examination that he was told by Lokayukta Police staff that work will be attended in case he would follow the instructions of Lokayukta Police staff cannot be equally believed for the reason that nothing is brought out during cross examination of PW3 in support of the said answer. Answer of the complainant during his cross examination that PW3 had furnished the cell phone numbers of delinquent officials 1 and 2 also cannot be accepted for the reason that nothing is brought out during cross examination of PW3 that PW3 furnished the cell phone numbers of delinquent officials 1 and 2.

33. It is brought out during cross examination of the complainant that when he asked delinquent official number 2 he was told by delinquent official 2 to approach delinquent official number 1. This answer elicited during cross examination of the complainant establishes that delinquent officials 1 and 2 had intended to demand and accept illegal gratification with assurance of extending favour in respect of the unauthorised construction of the building. It is brought out during cross examination of the complainant that he had told delinquent official number 1 that Gurulingaiah is constructing the building. Though it is brought out during cross examination of the complainant that after he told PW3 that delinquent official number 1 refused cash PW3 entered the office of delinquent officials 1 and 2 the said portion of his

answer cannot be believed in view of the fact that nothing is brought out during cross examination of PW3 in support of the said answer of the complainant. Answers elicited during cross examination of the complainant would lead to draw inference that though he had supported during examination-in-chief he intended to safeguard delinquent officials 1 and 2. Therefore, answers elicited during cross examination of the complainant will not lend assurance to the defence. Answers elicited during cross examination of the complainant will not equally lead to draw conclusion that evidence of the complainant during his examination- in-chief needs to be brushed aside.

34. Evidence of PW2 would show that subsequent to pre-trap mahazar the complainant was asked by Lokayukta Police staff to give bribe amount to the person who demands. It is in his evidence that the complainant alone entered the office of delinquent officials 1 and 2. Evidence of PW2 that after he along with the panch witness and Lokayukta Police staff entered the office of delinquent officials 1 and 2 the complainant told that as per the instructions of delinquent officials 1 and 2 cash is given to delinquent official number 1. This portion of his evidence is not under challenge. It is brought out during cross examination of PW2 that on being questioned by PW3 the complainant responded that cash is given to delinquent official number 1. This portion of his answer instead of lending assurance to the defence strengthens the charge. It is in the evidence of PW2 that finger wash of delinquent official number 1 turned to pink colour. This portion of his evidence is not under challenge. It is in his cross examination that except the process of finger wash of hands of delinquent official number 1 PW3 has not

conducted the process of finger wash of any others. If really PW3 had intended for false implication of delinquent officials 1 and 2, then, PW3 would have resorted to get the fingers of hands of delinquent official number 2 washed. Seizure of cash is brought out during cross examination of PW2. Though it is brought out during cross examination of PW2 that on the next day his signatures are obtained on the documents it is not specifically brought out during his cross examination that his signature on the trap mahazar has been obtained on the next day. Evidence of PW2 would show that after the process of finger wash of hands of delinquent official number 1 delinquent officials 1 and 2 are brought to Lokayukta Police Station, City Division, Bengaluru where pant and shirt of delinquent official number 1 are seized. It is in his evidence that contents of button camera and voice recorder which were earlier given to the complainant are transmitted to compact disc and also sheet of papers. It is in his evidence that voice of delinquent officials 1 and 2 are identified by one Nagaraj who then was working as Executive Engineer in the office of delinquent officials 1 and 2. Ex P8 is the attested copy of statement of Nagaraj given before PW3 touching the identification of voice of delinquent officials 1 and 2 which was recorded in the voice recorder. Since nothing is specifically brought out during cross examination of PW2 it cannot be held that PW3 has not conducted trap mahazar in the office of delinquent officials 1 and 2 on the day of trap. Upon appreciation of the entire cross examination of PW2 I find that nothing worthy is found to disbelieve his evidence.

35. Evidence of PW3 that subsequent to pre-trap mahazar the complainant entered the office of delinquent officials 1 and

2 at 3.25 P.M is not under challenge. PW3 has stated that after the signal given by the complainant at 4.10 P.M he along with his staff, shadow witness and panch witness entered the office of delinquent officials 1 and 2. This portion of his evidence is not under challenge. PW3 has stated during evidence that after his entry to the office of delinquent officials 1 and 2 the complainant pointed out delinquent officials 1 and 2 and told that when the complainant offered cash to delinquent official number 2 he was instructed by delinquent official number 2 to give cash to delinquent official number 1 and as per the instructions of delinquent official number 2 cash is given to delinquent official number 1. This portion of evidence of PW3 is not under challenge and therefore the said portion of his evidence needs acceptance which incriminates delinquent officials 1 and 2. During cross examination of PW3 it is elicited that after his entry to the office of delinquent officials 1 and 2 the complainant pointed out delinquent officials 1 and 2.

36. Evidence of PW3 that he got prepared solution with water and sodium carbonate powder in the office of delinquent officials 1 and 2 and after obtaining the sample of the said solution he got immersed fingers of right hand of delinquent official number 1 in the residual solution placed in a container and got immersed fingers of left hand of delinquent official number 1 in the residual solution placed in another container and consequently the said wash turned to light pink colour has not been assailed during his cross examination and therefore the said portion of his evidence needs acceptance. During cross examination PW3 has stated that he has not subjected the fingers of both hands of delinquent official

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number 2 to wash. It needs to be inferred that since PW3 came to know through the complainant that on the instructions of delinquent official number 2 cash is given to delinquent official number 1 PW3 has not subjected fingers of hands of delinquent official number 2 in the solution. Change of colour of finger wash of both hands of delinquent official number 1 establishes that delinquent official number 1 handled the tainted cash.

37. During evidence PW3 has stated that on being questioned by him about cash delinquent official number 1 responded that cash of Rs.5,000/- is in the right side front pocket of pant and that cash of Rs.5,000/- is in the pocket of shirt. This portion of evidence of PW3 has not been assailed in its true letter and spirit and therefore the said portion of his evidence needs acceptance which incriminates delinquent official number 1. PW3 has stated that delinquent official number 1 also told him that out of total sum of Rs.10,000/- a sum of Rs.5,000/- is towards the share of delinquent official number 2. This portion of his evidence has not been assailed during his cross examination and therefore the said portion of his evidence needs acceptance which incriminates delinquent official number 2. It is well settled that confession of the accused in a criminal trial will not incriminate the co-accused. Since the present inquiry is not criminal trial the statement of delinquent official number 1 that out of the total amount of Rs.10,000/- a sum of Rs.5,000/- is towards the share of delinquent official number 2 incriminates delinquent official number 2 is admissible in evidence and needs acceptance.

38. It is in the evidence of PW3 that on his instructions PW2 took out tainted cash of Rs.5,000/- from the left side pocket of

shirt of delinquent official number 1 and took out tainted cash of Rs.5,000/- from the right side front pocket of pant of delinquent official number 1. This portion of his evidence has not been assailed during his cross examination and therefore the said unchallenged evidence of PW3 establishes possession of tainted cash by delinquent official number 1. Seizure of tainted cash from the possession of delinquent official number 1 as stated by PW3 is also not under challenge which establishes possession of tainted cash by delinquent official number 1. Seizure of pant and shirt of delinquent official number 1 as stated by PW3 during evidence is also not under challenge. Evidence of PW3 that on being questioned by him for production of the file of the complainant delinquent official number 1 produced the file is not under challenge. PW3 has stated that he obtained xerox copies of the file of the complainant and after getting those sheets attested seized those sheets. Except the last two attested sheets the remaining sheets at Ex P4 are the attested sheets of the file pertaining to the complainant. Evidence of PW3 that he found that the office of delinquent officials 1 and 2 is not suitable for further proceedings and therefore he brought delinquent officials 1 and 2 to Lokayukta Police Station, City Division, Bengaluru is convincing.

39. During evidence PW3 has stated that after shifting delinquent officials 1 and 2 to Lokayukta Police Station, City Division, Bengaluru he got transmitted the contents of digital camera to compact disc and also got transmitted those contents to four sheet of papers. Ex P10 are attested sheets of the transmitted version of the digital camera. PW3 has stated that delinquent officials 1 and 2 have gave statement

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before him touching the cash. Ex P6 is the attested copy of statement of delinquent official number 1 given before PW3. Ex P7 is the attested copy of statement of delinquent official number 2 given before PW3. PW3 has stated that he secured Sri. S.D. Nagaraju who then was the higher officer of delinquent officials 1 and 2 who has given statement the attested copy of which is at Ex P8. He has stated that he transmitted the seized items to the Chemical Examiner and obtained the report the attested copy of which is at Ex P12. PW3 has further stated during evidence that he obtained the cell phone call details of the complainant, delinquent officials 1 and 2. Ex P13 is the attested copy of the said call details consisting of sixteen sheets. PW3 has stated that on completion of investigation he obtained sanction for prosecution of delinquent officials 1 and 2 and filed charge sheet against delinquent officials 1 and 2 in the Court of 23rd Additional City Civil and Sessions Judge, Bengaluru.

40. During cross examination of PW3 it is brought out that he conducted personal search of delinquent official number 1 and that he has not conducted personal search of delinquent official number 2. It needs to be mentioned that since PW3 came to know that on the instructions of delinquent official number 2 cash is received by delinquent official number 1 he has not conducted personal search of delinquent official number 2. Ex P3 is the attested copy of trap mahazar. Page number 6 of Ex P3 shows that the relevant portion of contents of button camera are incorporated. Suggestion posed to PW3 during cross examination that page number 6 of Ex P3 does not show the contents of voice recorder and that the same has not disclosed demand by delinquent

officials 1 and 2 has been denied by PW3. It is in the cross examination of PW3 that he has not obtained the signatures of staff who were in the office of delinquent officials 1 and 2. It needs to be expressed at this juncture that the Investigating Officer need not obtain the signatures of the staff who then were working in the office of delinquent officials 1 and 2. It is brought out during cross examination of PW3 that after securing the file touching the complainant he came to know that delinquent officials had not evinced interest to see that unauthorised construction is stopped. Though it is brought out during cross examination of PW3 that order of stay ordered by the Court was in force the fact remains that the conduct of delinquent officials unfolds that since the file of the complainant was pending in their office they thought of giving assurance to the complainant that work of the complainant will be attended subject to fulfilment of illegal gratification. Suggestion posed to PW3 that delinquent officials 1 and 2 were not empowered to give endorsement to the complainant has been denied by him. It needs to be expressed that nothing had prevented delinquent officials 1 and 2 to give endorsement to the complainant that since order of stay ordered by the Court is in force the file cannot be attended. Ex P13 is the attested copy of cell phone call details consisting of fourteen sheets. Though it is brought out during cross examination of PW3 that Ex P13 does not show outgoing calls from delinquent officials 1 and 2 and that the same shows outgoing calls of the complainant the fact remains that Ex P13 shows that many a times the complainant contacted delinquent officials 1 and 2 over cell phone which establishes that in connection with the file of the complainant he

contacted delinquent officials 1and 2 over cell phone. Upon appreciation of entire cross examination of PW3 I find that nothing worthy is brought out to discredit the testimony of PW3.

41. Ex P4 shows that on 21/06/2010 the then Assistant Executive Engineer and Delegated Authority of the Commissioner, BBMP, Vijayanagara Sub-Division, Bengaluru has issued notice under section 321(1) of The Karnataka Municipal Corporations Act, 1976 which establishes pendency of file of the complainant in the office of delinquent officials 1 and 2. Ex P9 which is the transmitted version of the voice recorder shows that delinquent official number 1 demanded illegal gratification from the complainant. Ex P10 which is the attested copy of transmitted version of the button camera and voice recorder shows the conversation between the complainant and delinquent officials 1 and 2. It needs to be borne in mind that in the inquiry proceedings of this nature rules of The Indian Evidence Act, 1872 are not strictly applicable and therefore Exs P9 and P10 can very well be pressed into service in the absence of compliance of section 65-B of The Indian Evidence Act, 1872. Exs P9 and P10 establishes demand for illegal gratification.

42. Ex P6 is the attested copy of statement in writing dated 14/12/2010 of delinquent official number 1 given before PW3 soon after trap. Explanation touching possession of tainted cash of 10,000/- is not found in Ex P6. Ex P7 is the attested copy of statement in writing dated 14/12/2010 of delinquent official number 2 given before PW3 soon after trap. Reverse page of Ex P7 shows that delinquent official number 2 has stated that the complainant hand over cash of Rs.10,000/- to

the Engineer of his office. It thus shows that the complainant gave cash of Rs.10,000/- to delinquent official number 1. Contents of Ex P7 incriminates delinquent official number 1.

43. During questionnaire delinquent officials 1 and 2 have denied the incriminating circumstances which appeared against them in the evidence of PWs 1 to 3. They have stated that their statements are obtained by force. Since Exs P6 and P7 are not seriously assailed during cross examination of PW3 version of delinquent officials 1 and 2 during questionnaire that their statements are obtained by force cannot be accepted.

44. In the decision in Vinod Kumar V/S State of Punjab reported in (2015) 3 Supreme Court cases page 220 PW5 who was the complainant in the trial Court turned hostile. The trial Court convicted the accused for the offence punishable under section 7, for the offence defined under section 13(1)(d) which is punishable under section 13(2) of The Prevention of Corruption Act, 1988. The said judgment has been upheld by the Hon'ble High Court. In paragraph number 47 of the above decision Hon'ble Supreme Court has been pleased to observe:

> "..... It is the settled principle of law that mere recovery of the tainted money is not sufficient to record a conviction unless there is evidence that bribe had been demanded or money was paid voluntarily as bribe....."

Evidence in the case on hand as discussed above establishes that on the instructions of delinquent official number 2 delinquent official number 1 voluntarily accepted tainted cash

of Rs.10,000/- out of which a sum of Rs.5,000/- was for himself and balance of Rs.5,000/- was towards the share of delinquent official number 2.

45. Putting incriminating circumstances to delinquent officials 1 and 2 by way of questionnaire is in par with section 313 of The Code of Criminal Procedure, 1973. During questionnaire delinquent officials 1 and 2 have not offered any explanation touching possession of tainted cash of Rs.10,000/- by delinquent official number 1 and also touching seizure of tainted cash. In paragraph number 55 of the decision in Vinod Kumar V/S State of Punjab reported in (2015) 3 Supreme Court cases page 220 Hon'ble Supreme Court has been pleased to observe :

> " 55. The appellant was caught red-handed with those currency notes. In his statement recorded under Section 313 CrPC he has taken the plea that he is innocent and has been falsely implicated due to animosity. No explanation has been given as regards the recovery. Therefore, from the above facts, legitimately a presumption can be drawn that the appellant – accused had received or accepted the said currency notes on his own volition."

46. Ex P4 points out that the file pertaining to the complainant was pending in the office of delinquent officials 1 and 2. It needs to be expressed that in the presence of pendency of the file pertaining to the complainant delinquent officials 1 and 2 attempted to demand illegal gratification from

the complainant with assurance of extending official favour. Evidence as discussed above establishes that earlier to the day of trap the complainant approached delinquent officials 1 and 2 and at that time delinquent officials 1 and 2 demanded illegal gratification of Rs.20,000/-. Evidence on record establishes that on the day of trap when the complainant approached delinquent official number 2 demand for illegal gratification was laid and on the instructions of delinquent official number 2 tainted cash of Rs.10,000/- is accepted by delinquent official number 1 from the complainant in the office of delinquent officials 1 and 2. Evidence on record establishes that finger wash of both hands of delinquent official number 1 turned to light pink colour which is suggcstive of the fact that delinquent official number 1 accepted the tainted cash and handled the same. Evidence on record establishes that out of tainted cash Rs.10,000/- received by delinquent official number 1 a sum of Rs.5,000/- was towards his share and a sum of Rs.5,000/- was received towards the share of delinquent official number 2. Nothing is found either in the evidence of PWs 1 to 3 or during questionnaire that delinquent officials 1 and 2 have offered satisfactory explanation about tainted cash. Delinquent officials 1 and 2 have not offered satisfactory explanation touching recovery of tainted cash.

47. In the presence of evidence as discussed above I am not persuaded to accept the contentions put forward in the course of written statement of defence dated 31/01/2020 of delinquent officials 1 and 2. I am equally not persuaded to accept the contentions put forward in the course of written argument dated 20/02/2020 of delinquent officials 1 and 2.

Documents enclosed to the written argument of delinquent officials are also of no assistance to the defence of delinquent officials 1 and 2.

48. Failure on the part of delinquent officials 1 and 2 to offer satisfactory explanation touching tainted cash of Rs.10,000/- which was received by the delinquent official number 1 from the complainant on the instructions of delinquent official number 2 on the day of trap attracts misconduct within the purview of Rule 3(1)(i) to (iii) of The Karnataka Civil Services (Conduct) Rules, 1966 and being of this view I proceed with the following:

REPORT

Charge against delinquent officials 1 and 2 that in order to evict Sri. Gurulingaiah from the building constructed by Gurulingaiah on the site bearing survey number 114 measuring 21 feet in breadth and 185 feet in length situated at 25th cross road, K.P.Agrahara, Bhuvaneshwarinagara, Bengaluru delinquent official number 1 while discharging duties as Asistant Engineer attached to Bruhath Bengaluru Mahanagara Palike, Vijayanagara Sub-Division, Bengaluru in the year 2010 and delinquent official number 2 while discharging duties as Assistant Executive Engineer attached to Bruhath Bengaluru Mahanagara Palike, Vijayanagara Sub-Division, Bengaluru demanded illegal gratification of Rs.20,000/- i.e., at the rate of Rs.10,000/- each towards their share from the complainant and thereafter, on 14/10/2010 between 3.20 P.M and 04.10 P.M delinquent officials 1 and 2 demanded illegal gratification from the complainant in the office of delinquent officials 1 and 2 situated in the 3rd floor of

the building at 3rd main road, Vijayanagara, Bengaluru and on the instructions of delinquent official number 2, delinquent official number 1 accepted illegal gratification of Rs.10,000/- from the complainant and during investigation conducted by the Police Inspector attached to Lokayukta Police Station, City Division, Bengaluru in crime number 6/2010 of Lokayukta Police Station, City Division, Bengaluru delinquent officials 1 and 2 failed to offer satisfactory explanation for possession of tainted cash of Rs.10,000/- possessed by delinquent official number 1 in the office of Bruhath Bengaluru Mahanagara Palike situated in the 3rd floor of the building at 3rd main road, Vijayanagara, Bengaluru and thereby delinquent officials 1 and 2 are guilty of misconduct within the purview of Rule 3(1)(i) to (iii) of The Karnataka Civil Services(Conduct) Rules, 1966 is proved.

Delinquent official number 1 is due for retirement on superannuation on 31/03/2025.

Delinquent official number 2 retired on superannuation on 31/11/2019.

Submit this report to the Hon'ble Upalokayukta-1, Karnataka in a sealed cover forthwith along with connected records.

18-3-2025

(V.G. BOPAIAH)
Additional Registrar, Enquiries-11,
Karnataka Lokayukta, Bengaluru.

ANNEXURE

List of witness examined on behalf of the Disciplinary Authority

PW 1:- Sri. M.Chandrashekar.

PW 2:- Sri. G.H.Kumar.

PW 3:- Sri. G.R.Ramesh.

List of witness examined on behalf of delinquent officials 1 and 2:- Nil.

List of documents marked on behalf of Disciplinary Authority:-

Ex P 1	Attested copy of the complaint dated 14/12/2010 in two sheets of the complainant.
Ex P1(a)	Signature of the complainant found on Ex P1.
Ex P 2	Attested copy of pre-trap mahazar dated 14/12/2010 in six sheets.
Ex P2(a)	Signature of the complainant found on Ex P2.
Ex P 3	Attested copy of trap mahazar dated 14/12/2010 in ten sheets.
Ex P 3(a)	Signature of the complainant found on sheet number 2 of Ex P3.
Ex P 4	Forty three attested sheets of the file pertaining to the complainant.
Ex P5	A single attested sheet containing the numbers of currency notes.
Ex P6	Attested copy of statement in writing dated 14/12/2010 in a single sheet of delinquent official number 1 given before

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PW3.

Ex P7	Attested copy of statement in writing dated 14/12/2010 in a single sheet given before PW3.
Ex P8	Attested copy of statement in writing dated 14/12/2010 in a single sheet of Sri. S.D. Nagaraju who then was working as Executive Engineer, BBMP, Vijayanagara Division, Bengaluru.
Ex P9	Two attested sheets of transcripted version of the contents of digital voice recorder.
Ex P10	Four attested sheets of the transcripted version of the contents of spy camera.
Ex P11	Attested copy of FIR dated 14/12/2010 in a single sheet in crime number 61/2010 of Lokayukta Police Station, City Division, Bengaluru.
Ex P12	Attested copy of report dated 28/12/2010 in a single sheet of Assistant Chemical Examiner, Public Health Institute, Bengaluru.
Ex P13	Attested copy of cell phone call details consisting of fourteen sheets.

<u>List of documents marked on behalf of delinquent officials 1 and 2:- Nil.</u>

(V.G. BOPAIAH)
Additional Registrar, Enquiries-11,
Karnataka Lokayukta, Bengaluru.

GOVERNMENT OF KARNATAKA

KARNATAKA LOKAYUKTA

No. LOK/INQ/14-A/284/2012/ARE-11

Multi Storied Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru-560 001
Date: **20/03/2020**

RECOMMENDATION

Sub:- Departmental inquiry against;

1) Sri A.M. Rajashekara Murthy, Assistant Engineer, Bruhat Bengaluru Mahanagara Palike, Vijayanagar Sub Division, Bengaluru;

2) Sri K.R. Ramesh, Assistant Director (Grade-II), Karnataka Rural Infrastructure Development Limited (then working as Assistant Executive Engineer on deputation at Bruhat Bengaluru Mahanagara Palike, Vijayanagar Sub Division, Bengaluru – Reg.

Ref:- 1) Government Order No.ಲೋಇ 44 ಸೇಇವಿ 2012 Bengaluru dated 12/3/2012

2) Order No. KRIDL/EST/CR-5/2012-13 dated 22/6/2012 of the Managing Director, Karnataka Rural Infrastructure Development Ltd., Bengaluru.

3) Nomination order No.LOK/INQ/14-A/284/2012, Bengaluru dated 2/7/2012 of Upalokayukta-1, State of Karnataka, Bengaluru

4) Inquiry Report dated 18/3/2020 of Additional Registrar of Enquiries-11, Karnataka Lokayukta, Bengaluru

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The Government in Public Works, Ports and Inland Water Transport Department by its Order dated 12/3/2012, initiated the disciplinary proceedings against Sri A.M. Rajashekara Murthy, Assistant Engineer, Bruhat Bengaluru Mahanagara Palike, Vijayanagar Sub Division, Bengaluru (hereinafter referred to as Delinquent Government Official-1, for short as DGO-1) and entrusted the Departmental Inquiry to this Institution.

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2. The Managing Director, Karnataka Rural Infrastructure Development Limited, Bengaluru by Order dated 22/6/2012 initiated disciplinary proceedings against Sri K.R. Ramesh, Assistant Director (Grade-II), Karnataka Rural Infrastructure Development Limited – then working as Assistant Executive Engineer on deputation at Bruhat Bengaluru Mahanagara Palike, Vijayanagar Sub Division, Vijayanagar (hereinafter referred to as Delinquent Govt. Official-2, for short as DGO-2) and entrusted the departmental inquiry to this institution.

3. This Institution by Nomination Order No.LOK/INQ/14-A/294/2012, Bengaluru dated 2/7/2012 nominated Additional Registrar of Enquiries-4, Karnataka Lokayukta, Bengaluru, as the Inquiry Officer to frame charges and to conduct Departmental Inquiry against DGOs 1 & 2 for the alleged charge of misconduct, said to have been committed by them. Subsequently, by Order No. LOK/ INQ/14-A/2014, dated 14/3/2014, the Additional Registrar of Enquiries-5, Karnataka Lokayukta, Bengaluru was re-nominated as inquiry officer to conduct departmental inquiry against DGOs 1 & 2. Again, by Order No. UPLOK-1/DE/2016 dated 3/8/2016, the Additional Registrar of Enquiries-11, Karnataka Lokayukta, Bengaluru was re-nominated as inquiry officer to conduct departmental inquiry against DGOs 1 & 2.

4. The DGO-1 Sri A.M. Rajashekara Murthy, Assistant Engineer, Bruhat Bengaluru Mahanagara Palike, Vijayanagar Sub Division, Bengaluru and DGO-2 Sri K.R. Ramesh, Assistant Director (Grade-II), Karnataka Rural Infrastructure Development Limited – then working as Assistant Executive Engineer on

deputation at Bruhat Bengaluru Mahanagara Palike, Vijayanagar Sub Division, Vijayanagar were tried for the following charge:-

> "That, you DGO-1 Sri A.M. Rajashekar and DGO-2 Sri K.R. Ramesh while working as Assistant Engineer and Assistant Executive Engineer respectively at Vijayanagar Sub Division of B.B.M.P in Bangalore, the complainant namely Sri Chandrashekar S/o. Late Mariyappa of Bhuvaneshwarinagar in Bangalore approached you requesting to take necessary steps to evict Sri Gurulingaiah, who has put up illegal construction in site measuring 21'x185' of Sy. No. 114 situated at 25th Cross Road of Bhuvaneshwarinagar which was purchased by his father and gifted to his step mother Smt. Chikkamma @ Mangalamma and then both of you DGOs 1 and 2 asked the Complainant to pay bribe of ₹20,000/- and on 14/12/2010, you DGO-1 received bribe of ₹10,000/- for yourself and on behalf of you DGO-2 from the Complainant to show official favour, failing to maintain absolute integrity and devotion to duty, the act of which was unbecoming of a Government servant and thereby committed misconduct as enumerated U/R 3(1)(i) to (iii) of the Karnataka Civil Services (Conduct) Rules, 1966."

5. The Inquiry Officer (Additional Registrar of Enquiries-11) on proper appreciation of oral and documentary evidence has held that the charge against delinquent officials 1 and 2 that in order to evict Sri Gurulingaiah from the building constructed by Gurulingaiah on the site bearing survey number 114 measuring 21 feet in breadth and 185 feet in length situated at 25th Cross Road, K.P. Agrahara, Bhuvaneshwarinagar, Bengaluru delinquent official

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number 1 while discharging duties as Assistant Engineer attached to Bruhat Bengaluru Mahanagara Palike, Vijayanagara Sub Division, Bengaluru in the year 2010 and delinquent official number 2 while discharging duties as Assistant Executive Engineer attached to Bruhat Bengaluru Mahanagara Palike, Vijayanagara Sub Division, Bengaluru demanded illegal gratification of Rs.20,000/- i.e., at the rate of Rs.10,000/- each towards their share from the Complainant and thereafter, on 14/10/2010 between 3.20 P.M. and 04.10 P.M delinquent officials 1 and 2 demanded illegal gratification from the Complainant in the office of delinquent officials 1 and 2 situated in the 3rd floor of the building at 3rd main Road, Vijayanagara, Bengaluru and on the instructions of delinquent official number 2, delinquent official number 1 accepted illegal gratification of Rs.10,000/- from the Complainant and during investigation conducted by the Police Inspector attached to Lokayukta Police Station, City Division, Bengaluru in Crime number 6/2010 of Lokayukta Police Station, City Division, Bengaluru delinquent officials 1 and 2 failed to offer satisfactory explanation for possession of tainted cash of Rs.10,000/- possessed by delinquent official number 1 in the office of Bruhat Bengaluru Mahanagara Palike situated in the 3rd floor of the building at 3rd main road, Vijayanagara, Bengaluru and thereby delinquent officials 1 and 2 are guilty of misconduct within the purview of Rule 3(1)(i) to (iii) of the Karnataka Civil Services (Conduct) Rules, 1966 is proved.

6. 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.

7. As per the First Oral Statement submitted by DGOs 1 & 2;

(1) DGO-1 Sri A.M. Rajashekara Murthy is due to retire from service on 31/3/2025;

(2) DGO-2 Sri K.R. Ramesh has retired from service on 30/11/2019 (during the pendency of inquiry).

8. Having regard to the nature of charge (demand and acceptance of bribe) proved against DGO-1 Sri A.M. Rajashekara Murthy and DGO-2 Sri K.R. Ramesh;

(i) it is hereby recommended to the Government for imposing penalty of compulsory retirement from service on DGO-1 Sri A.M. Rajashekara Murthy, Assistant Engineer, Bruhat Bengaluru Mahanagara Palike, Vijayanagar Sub Division, Bengaluru and also for imposing penalty of permanently withholding 30% of pension payable to DGO 1 Sri A.M. Rajashekara Murthy;

(ii) it is hereby recommended to the Government for imposing penalty of permanently withholding 50% of pension payable to DGO-2 Sri K.R. Ramesh, Assistant Director (Grade-II), Karnataka Rural Infrastructure Development Limited – then working as Assistant Executive Engineer on deputation at Bruhat Bengaluru Mahanagara Palike, Vijayanagar Sub Division, Vijayanagar.

9. Action taken in the matter shall be intimated to this Authority.

Connected records are enclosed herewith.

N. Ananda 20/3

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

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