



KARNATAKA LOKAYUKTA

No. Uplok-1/DE/303/2016/ARE-8

Multi Storied Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru-560 001.
Dated: 7.5.2022.

RECOMMENDATION

Sub: Departmental Enquiry against,
(1) Sri Maruthi Gokhale, Executive Engineer,
Minor Irrigation Sub-Division, Bidar, (2) Sri
Shivaputra Kalagi, Executive Engineer, Minor
Irrigation Sub-Division, Bidar, (3) Sri
Machendra Khagonda, Assistant Executive
Engineer, PWD Sub-Division, Basavakalyana,
Bidar, (4) Sri Chandrakanth Merje, Assistant
Executive Engineer, Panchayath Engineering
Division, Bidar and (5) Sri Ashok
Khemashetty, Assistant Engineer-2, Minor
Irrigation Sub-Division, Bidar - reg.

Ref: 1) Govt. Order No. Sa Ni E 40 Se Ee Vi
2016, Bengaluru, dated 08/08/2016.

2) Nomination order No. Uplok-
1/DE/303/2016, Bengaluru dated
17.8.2016 of Upalokayukta, State of
Karnataka.

3) Inquiry report dated 26.4.2022 of
Additional Registrar of Enquiries-8,
Karnataka Lokayukta, Bengaluru.

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The Government by its order dated 08.08.2016  
initiated the disciplinary proceedings against(1) Sri

Maruthi Gokhale, Executive Engineer, Minor Irrigation Sub-Division, Bidar, (2) Sri Shivaputra Kalagi, Executive Engineer, Minor Irrigation Sub-Division, Bidar, (3) Sri Machendra Khagonda, Assistant Executive Engineer, PWD Sub-Division, Basavakalyana, Bidar, (4) Sri Chandrakanth Merje, Assistant Executive Engineer, Panchayath Engineering Division, Bidar and (5) Sri Ashok Khemashetty, Assistant Engineer-2, Minor Irrigation Sub-Division, Bidar [hereinafter referred to as Delinquent Government Officials, for short as 'DGO's'] and entrusted the departmental inquiry to this Institution.

2. This Institution by Nomination Order No. Uplok-1/DE/303/2016/ARE-8, Bengaluru dated 17.8.2016 nominated Additional Registrar of Enquiries-8, Karnataka Lokayukta, Bengaluru, as the Inquiry Officer to frame charges and to conduct departmental inquiry against DGOs for the alleged charges of misconduct, said to have been committed by them.

3. The DGOs (1) Sri Maruthi Gokhale, Executive

Engineer, Minor Irrigation Sub-Division, Bidar, (2) Sri Shivaputra Kalagi, Executive Engineer, Minor Irrigation Sub-Division, Bidar, (3) Sri Machendra Khagonda, Assistant Executive Engineer, PWD Sub-Division, Basavakalyana, Bidar, (4) Sri Chandrakanth Merje, Assistant Executive Engineer, Panchayath Engineering Division, Bidar and (5) Sri Ashok Khemashetty, Assistant Engineer-2, Minor Irrigation Sub-Division, Bidar, were tried for the following charge :-

**ANNEXURE-I**  
**CHARGE**

*“That the stilling basin has been damaged within few days of its construction due to worst concrete and payments made in contract certificate dt. 17.3.2011 for Rs.5,09,511/- which is said to be recorded in M.B. on page No. 72 to 74 of book No. 234 is not found in the M.B.234 and thereby you-DGO Nos. 1 to 5 failed to maintain absolute integrity and devotion to duty, the act of which is unbecoming of public/Government Servants and thereby you-DGO Nos. 1 to 5 committed misconduct as enumerated under Rule 3(1) of Karnataka Civil Service (Conduct) Rules, 1966”.*

4. In order to establish the charges leveled against the DGO, the Disciplinary Authority has examined three witnesses, i.e., PW-1 to PW-3 and got marked documents Ex.P1 to P55. On behalf of DGO five witnesses i.e., DW-1 to DW-5 witness have been examined and got marked documents Ex.D1 to Ex.D3.


5. The Inquiry Officer (Additional Registrar of Enquiries- 8) on proper appreciation of oral and documentary evidence has held that, the Disciplinary Authority has 'not proved' the above charge against the DGOs No. 1 to 5.

6. On re-consideration of report of inquiry and all other materials on record, I do not find any reason to interfere with the findings recorded by the Inquiry Officer. Therefore, it is hereby recommended to the Government to accept the report of Inquiry Officer and to exonerate DGOs Nos. 1 to 5 i.e., (1) Sri Maruthi Gokhale, Executive Engineer, Minor Irrigation Sub-Division, Bidar, (2) Sri Shivaputra Kalagi, Executive Engineer, Minor Irrigation Sub-Division, Bidar,

(3) Sri Machendra Khagonda, Assistant Executive Engineer, PWD Sub-Division, Basavakalyana, Bidar,  
(4) Sri Chandrakanth Merje, Assistant Executive Engineer, Panchayath Engineering Division, Bidar and  
(5) Sri Ashok Khemashetty, Assistant Engineer-2, Minor Irrigation Sub-Division, Bidar, of the charges leveled against them.

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

Connected records are enclosed herewith.

  
- 07/05/2022  
**(JUSTICE K.N. PHANEENDRA)**  
**Upalchayukta-2,**  
**State of Karnataka.**





Executive Engineer, Panchayath Engineering Division, Bidar, (5) Sri Ashok Khemashetty, Assistant Engineer-2, Minor Irrigation Sub-Division, Bidar (hereinafter referred to as Delinquent Government Officials in short DGO-1 to 5).

2. In view of Government Order cited at reference No.1 the Hon'ble Upalokayukta-1 vide Order cited at reference No.2 has nominated Additional Registrar Enquiries-8 to frame Articles of Charge and to conduct enquiry against aforesaid DGO-1 to 5.
3. The Substance of Imputations of misconduct against the Delinquent Government Officials is as follows;
  - i. An investigation was taken up u/s 9 of Karnataka Lokayukta Act, on the basis of complaint filed by Sri. JeevanRao, S/o Madhavarao Shindhe, Belakune Grama, Bhupala Gad B Aurad Taluk, Bidar District (herein after referred to as complainant in short) against DGO-1 to 5.
  - ii. According to the complainant:-

The works executed in Bhopalgad Village by Irrigation department out of NABARD grants are of substandard and bed laid in waste weir of tank is already damaged. Complaint was referred to TAC, Lokayukta for investigation. Investigation was been conducted by AEE-III, TAC Lokayukta (I.O. in short) on the instructions of Chief Engineer, Karnataka Lokyaukta. The report of I.O disclose that, stilling basin was found damaged within

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few days from the date of laying cement concrete and payment was not made to the contractor for that portion of work. Chief Engineer, Karnataka Lokayukta after verifying the report of I.O. has further opined that, false measurement was recorded by the DGO's in the M.B. and it has been corrected later and that, if top surface of stilling basin is damaged, it shows that quality of concrete is worst.

iii. After receiving the I.O report, the officers who had worked during the relevant period of execution of work have been impleaded and report of I.O. was supplied to DGO's for their reply. DGO-1 to 5 has submitted their reply denying the correctness of report of I.O. The report of I.O, opinion of C.E., TAC, Karnataka Lokayukta and the records prima facie show that;

a) The stilling basin has been damaged within few days of its construction and it is due to worst concrete.

b) Payment shown in the contract certificate dated 17/03/2011 for Rs. 5,09,511/- which is said to be recorded in M.B. page No. 72 of book No. 234 is not found in the M.B.234.

iv. The comments submitted by the DGO's was not accepted by the Hon'ble Upalokayukta-1 and held that, they are prima facie found guilty of misconduct and have failed to maintain absolute integrity besides

  
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devotion to duty and have acted in a manner which is unbecoming of a government servants making them liable for the departmental action. Accordingly recommendation was made under section 12(3) of Karnataka Lokayukta Act, 1984 to the competent authority to initiate disciplinary proceedings against DGO-1 to 5 to entrust the enquiry to this institution under Rule 14-A Karnataka Civil Services (Classification Control Appeal) Rules, 1957. The competent authority after examining the 12(3) report under section 12(4) has issued the entrustment order.

4. Additional Registrar Enquiries-8 has prepared Articles of Charge, Statement of Imputations of misconduct, List of witnesses and List of documents and copies of the same were sent to DGO's for their appearance and to submit their written statement of defense. The Delinquent Government Officials appeared on 20/09/2016 before this authority, pursuant to service of Articles of Charge. The Plea (FOS) was recorded on 02/12/2016, the DGO's pleaded not guilty and claimed enquiry into the charge. The Articles of Charge framed against DGO's is as follows;

"That the stilling basin has been damaged within few days of its construction due to worst concrete and payments made in contract certificate dated 17/3/2011 for Rs. 5,09,511/- which is said to be recorded in M.B. 234 in page No.72 to 74 but not found in the M.B. 234 and thereby you DGO No.1 to 5 failed to maintain absolute integrity and

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devotion to duty, the act of which is unbecoming of public/Government Servants and have committed misconduct as enumerated under rule 3 (1) of Karnataka Civil Services (Conduct) Rules, 1966.”

5. The DGO-1 filed written statement of defense denying the allegations made against him, Articles of Charge and the averments of statement of imputation of misconduct. It is contended by him that, he worked as Executive Engineer, Minor Irrigation Division, Bidar from 04/06/2009 to 22/06/2011. It is further contended that, the improvement of Bhopalgad (B) M.I. Tank of Aurad Taluk, Bidar District was under taken under NABARD scheme for estimated cost of Rs. 50 lakhs. The Administrative and Technical sanction to estimate was accorded by the competent authorities. The tender was called through e-procurement and after following the procedure entrusted the work to Sri Gurunath Kollur, Class-I contractor for a total amount of Rs.50,54,764/-. He further contends that, bills of said works paid in parts for completed portion of the items of work. The Assistant Executive Engineer measured the work done quantities 100% and recorded the same in M.B. and submitted bills to his office for payment. After conducting 25% random check of measurement of the work done quantities and scrutiny in the Accounts Section, the bill was submitted for payment.
6. It is further contended that, the work done quantities are recorded in M.B.No.234 at page No.73 to 74 including the pre-measurements in page No.71 to 72. The work done quantities

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includes tender item providing Contract Certificate in stilling basin in the waste weir portion of work. Accordingly, the Contract Certificate 1<sup>st</sup> and part bill dated 15/03/2011 submitted by the Assistant Executive Engineer, MI Division was passed and payment of Rs.5,09,511/- was made. The item of work is as per the tender specifications and Assistant Executive Engineer has checked the measurement of the entire quantities. He learnt that, during the month of August 2011 there were unforeseen heavy rains and floods resulting in heavy water pressure which damaged the top surface of waste weir stilling basin. The said damage was entirely due to unforeseen natural calamity of heavy rains and floods and not due to quality of concrete. The samples of cement, jelly and the sand used for the work were sent for examination to Quality Control Sub-division Gulbarga. The Quality Control Sub-division cleared in the report. The NDT (Rebound Hammer Test) was conducted through accredited test agency i.e., M/s Multi Serve Engineering Consultancy, Bidar which also confirmed the quality and strength of the cement and concrete. The TAC, Karnataka Lokayukta states work has been executed in complete manner and still in good condition benefitting the villagers. The measurements of work done quantities checked and tallies with the recorded measurements. The complainant who was present in the spot inspection realized that the quality of work and filed affidavit and gave statement withdrawing his complaint. He has not committed any misconduct and discharged his duties with utmost sincerity, absolute integrity, and devotion to duty. There

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is no material to condone delay in initiation of proceedings as set out in section 8 (2) (c) & (d) of Karnataka Lokayukta Act, 1984.

7. The DGO.2 filed written statement denying all the allegations made against him, Articles of Charge and statement of imputations of misconduct. He states that he worked as Executive Engineer, Minor Irrigation Division, Bidar from 22.06.2011 to 15.07.2013 and has reiterated the written statement of DGO.1 besides contending that the work was under progress and indemnity period of the agency for the work done quantities was existed when assumed charge. The quantity of the damaged portion of waste weir stilling basin concrete was measured, estimated and deducted from the pre-final Contract Certificate 4<sup>th</sup> and part bill dated; 11.07.2011 recorded in MB 337 at page 7 to 12. The adjustment entries were made in Contract Certificate 4<sup>th</sup> & part only with the bonafide intention of reflecting the said transaction of recovery of amount of damages in the bill. By the time damages were caused, the payment was already made in Contract Certificate 1<sup>st</sup> and part in March, 2011, the same was recovered. There is no loss caused to the Government or public exchequer. He has discharged his duties in a bonafide manner keeping in mind the interest of State and public at large.
8. The DGO-3 filed written statement denying all the allegations made against him and others. He did not deny his employment as Assistant Executive Engineer at the relevant point time. It is contended by him in his written statement that the complainant

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has withdrawn the complaint stating that he realized the mistake after conducting of spot inspection by the TAC team. The complainant gave statement and filed affidavit to that effect before the enquiry officer, Karnataka Lokayukta. On the above grounds prays to drop the proceedings against him.

9. The DGO.4 filed written statement denying all the allegations made against him and others. He did not deny his employment as Assistant Executive Engineer at the relevant point of time. It is contended by him in his written statement that the complainant has withdrawn the complaint stating that he realized the mistake after conducting of spot inspection by the TAC team. The complainant gave statement and filed affidavit to that effect before the enquiry officer, Karnataka Lokayukta. On the above grounds prays to drop the proceedings against him.
10. The DGO-5 filed written statement denying all the allegations made against him and others. He did not deny his employment as Assistant Engineer at the relevant point of time. It is contended by him in his written statement that the complainant has withdrawn the complaint stating that he realized the mistake after conducting of spot inspection by the TAC team. The complainant gave statement and filed affidavit to that effect before the enquiry officer, Karnataka Lokayukta. On the above grounds prays to drop the proceedings against him.
11. The Learned Presenting Officer to prove the misconduct of the Delinquent Government Officials has examined three witnesses

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PW1 to PW3 got marked Ex.P-1 to Ex.P-55. The Second Oral Statement of the DGO-1 to 5 was recorded under Rule 11 (18) CCA Rules. The DGO-1 to 5 pleaded defense.

12. The DGO.1 to 5 examined themselves as DW1 to DW5 in support of their defense, got marked Ex.D1 to Ex.D3 and closed their side.

13. Heard the arguments of learned Presenting Officer appearing for disciplinary authority and the learned defense assistants Sri.VTM appearing for DGO-1 & 2 and Sri B.M appearing for DGO-3 to 5. The learned defense assistant Sri VTM and Sri B.M also filed written brief apart from oral arguments. Perused the written briefs submitted by the learned defense assistants appearing for DGO-1 to 5. Due to Covid-19 and additional charge of ARE (2), CLC-1 & 2 delay is caused in submitting this report.

14. The point that arises for my consideration is as follows;

“Whether the Disciplinary Authority has not proved the charge framed against the Delinquent Government Officials 1) Sri Maruthi Gokhale, Executive Engineer, Minor Irrigation Sub-Division, Bidar, 2) Sri Shivaputra Kalagi, Executive Engineer, Minor Irrigation Sub-Division, Bidar, 3) Sri Machendra Khangoda, Assistant Executive Engineer, PWD Sub-division, Basavakalyana, Bidar, 4) Sri Chandrakanth Merje, Assistant Executive Engineer, Panchayath Engineering Division, Bidar and 5) Sri Ashok

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Khemashetty, Assistant Engineer-2, Minor Irrigation Sub-Division, Bidar.”

15. My answer to the above point is in the 'Negative' for the following reasons.

**REASONS**

16. Before considering the evidence placed on record by both disciplinary authority and the defense, it is necessary to narrate the case of the disciplinary authority. The improvement work of minor irrigation tank of Bhopalgad (B) of Aurad Taluk, Bidar District was taken up under NABARD Scheme with an estimated cost of Rs.50,54,764/-. A sum of Rs.5,09,511/- was incurred for the work of waste weir stilling basin of the said tank. The stilling basin was damaged within few days from the date of laying cement concrete. Payment of Rs.5,09,511/- was made to the contractor in Contract Certificate dated; 17.03.2011 which is has to be recorded in page 72 and 74 of MB 234 but not found in MB 234. The damage was due to bad quality of concrete. It is pertinent to note that the DGO.1 to 5 denied the charge leveled against them. According to defense taken by the DGO.1 to 5, the waste weir stilling basin damaged on account of heavy water pressure due to unforeseen heavy rains and floods during the month of August, 2011 and not due to poor quality of concrete. It is further the case of DGO.1 to 5 that the quantity of the damaged portion of waste weir stilling basin concrete was measured, estimated and deducted from the pre-final Contract

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Certificate 4<sup>th</sup> and part bill dated; 11.07.2011, recorded in MB 237 at page 7 to 12. The adjustment entries were made in Contract Certificate 4<sup>th</sup> and part only with the bonafide intention of reflecting the said transaction of recovery amount of damages in the bill. The payment was made in Contract Certificate 1<sup>st</sup> and part in March, 2011 before the damages were caused and the same was recovered.

17. Looking to the defense taken by the DGOs, the initial burden is upon the disciplinary authority to prove the charges leveled against the DGO.1 to 5. The oral as well as the documentary evidence placed on record by both disciplinary authority and DGOs is taken for consideration. PW3-Sri.Jeevana Rao is the complainant has stated in his evidence that DGO.1 to 5 were in charge works of Bhopalgad Village Tank. He further states that the weir stilling basin was not properly constructed and the same was damaged due to rains during first year itself. The waste weir stilling basin was damaged because the height of tank bund was raised only 5 inches instead of two feet. He further deposed that he lodged detailed complaint as per Ex.P3; the same was enclosed to Form No.1-Ex.P1 and Form No.2-Ex.P2. He further deposed that he has produced the documents as per Ex.P4 and Ex.P53. PW3 admits in the cross examination that Ex.D2 is the affidavit sworn to by him before notary and Ex.D1 is the letter given to Registrar, Karnataka Lokayukta, Bengaluru. Ex.P4 contain the documents relating to the estimate of the

  
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works undertaken for the improvement of the tank of Bhoplgad Village.

18. PW3 admits in the cross-examination that one Gurunath contractor constructed the waste weir stilling basin and he is responsible for the sub-standard work. Close reading of contents of Ex.D2, it is made clear that complainant was intending to withdraw the complaint as the same was filed under wrong notion on 18.01.2012. It is further sworn to in the affidavit-Ex.D2 that subsequently the Executive Engineer and Assistant Executive Engineer executed the work satisfactorily.
19. It is pertinent to note that, on the complaint lodged marked at Ex.D2 and when the investigation was taken up. It is for the Investigating officer to decide whether the work was satisfactory or not. Therefore Ex.D2 will not come to the aid of DOGs. The evidence of PW3 goes to show that the complaint is filed against the DGOs alleging sub-standard work of waste weir stilling basin. Ex.D1 is the letter written by PW3 to The Registrar, Karnataka Lokayukta, Bengaluru withdrawing his complaint. It is pertinent to note that it is not the personal grievance of the complainant. The grievance of the complainant is in respect of sub-standard tank work alleged to have been carried out by the DGOs. The investigation is taken up under section 9 of the Act by this institution in respect of mal administration based on the complaint. Therefore withdrawing complaint by the complainant does not arise and it will in no way help the defense.

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20. Presently this authority has to consider the other evidence placed by the disciplinary authority as to whether it supports the evidence of PW3 and proves the alleged misconduct of DGO-1 to 5.
21. This institution appointed PW1-Sri.C.N.Anand, Executive Engineer, Technical Audit Cell of this institution to conduct spot inspection and to submit report whether the waste weir stilling basin constructed for the improvement of tank of Bhopalgad Village was damaged on account of use of worst concrete. PW1-Sri.Anand the investigating officer has deposed in his evidence that on 01/11/2012 he visited the spot and conducted the spot inspection in the presence of DGO-4 and 5 and the complainant and conducted spot mahazar as per Ex.P-5 and taken photographs as per Ex.P-6 to Ex.P-35. PW1 further deposed that he has collected measurement book as per Ex.P-36 and submitted report as per Ex.P-37 with his opinion. PW1 further deposed that, Chief Engineer asked certain clarifications; he has obtained certain clarifications from DGO-4 and 5 and answered the clarifications of Chief Engineer in his report Ex.P-38. PW-1 has further deposed that Hon'ble Upalokayukta-1 asked certain clarifications from him after submission of clarifications to the Chief Engineer as per Ex.P38. He has answered the clarifications of Hon'ble Upalokayukta-1 as per Ex.P-39. PW1 further deposed that he has received two NDT test reports Ex.41 and Ex.P-42 and seven photographs Ex.P-43 to 49 from DGO-2 when he asked clarifications. PW-1 has specifically stated that he gave report

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stating that the charge leveled against the DGOs is not established.

22. Advocate for the DGO have argued that, PW-1 Executive Engineer, TAC, Karnataka Lokayukta who was directed by the Lokayukta office to visit the place of construction and submit the report pertaining to quality standard construction of bed laid in the waste weir of tank bed of Bhopalgad village maintained by Irrigation Department has submitted a contrary report in Exhibit P-36 to the allegation made in the complaint and the work carried out in constructing the tank bed stating it is satisfactory and the quality control report collected by him falsified the allegations. Chief allegations made by the complainant are further PW-2 Engineer who has submitted clarification report marked as Exhibit P-36 and in the end affirmed that technical expert report submitted by PW-2 may be accepted about the quality construction of tank bed and further argued the scattered damaged patches appearing on the upper layer of the concrete of the tank bed may be due to flow of water as a result of heavy rain and prays to rely on the report of PW-1 and 2 marked at Exhibit P-37 and 36 respectively and hold that DGO's have not committed any dereliction of duty or misconduct as public servant.
23. Per contra Presenting Officer has argued that though PW-2 Chief Engineer has recommended in his report Exhibit P-36 to accept the report of PW-1 but while giving clarification for reply as stated about scattered patches appearing on the tank bed of steel

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weir may lead to an inference that the construction work undertaken by DGO department was to be viewed with doubt. Hence, prays to hold the DGO's guilty of committing misconduct as a public servant.

24. After close analysis of the technical report of PW-1 AEE in Exhibit P-37 and PW-2 Chief Engineer Exhibit P-36 this enquiry authority has to assess the evidence to consider the allegations and article of charges leveled against DGO's-1 to 5 are established or not.

25. It is relevant to closely scrutinize the technical expert report of PW-1 who was directed by the then Hon'ble Upalokayukta to inspect construction of tank bed laid in waste weir tank and noted damages of the Bhopalgad village tank .PW-1 has stated in his evidence that, as per the direction he gave to the concrete construction of said tank bed carried out on waste water stilling basin and submitted the detailed report mentioned in Exhibit P-41 and 44 that the work carried out by DGO-1 to 5 is satisfactory and the entire report is marked as Exhibit P-37. So the technical expert report of PW-1, Executive Engineer of Karnataka Lokayukta submitted is against the allegations made in the complaint by PW-3.

26. Close reading of the order sheet discloses that, the then Hon'ble Upalokayukta after receiving report Ex.P-37 submitted by PW-1 AEE called for some clarification from PW-2 Chief Engineer, Karnataka Lokayukta. He has also stated in his report Exhibit P-

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36 that report of PW-1 Sri C.N. Anand in Exhibit P-37 is justified to the large extent and the fact relating to quality construction of concrete tank bed still weir cannot be doubted. On the specific quarry asked by the then Hon'ble Upalokayukta again relating to damages seen appearing in the form of scattered patches on the surface of the concrete tank bed is it a direct result of substandard quality construction are not, PW-2 has clearly stated that, when constantly, if water is flowing on the constructed steel basin as a result of flowing of water as a result of unexpected rain or flood such things could happen. In Ex.P-36 PW-2 has stated that, the damage on upper layer of the concrete bed construction has been got corrected and the amount of expenses incurred to repair the patches is deducted in final bill to be paid to the contractor.

27. Close scrutiny of the evidence of PW-1 Executive Engineer and PW-2 Chief Engineer would make it clear that quality construction of the work taken up by DGO's relating to bed laid in the weir waste of tank is satisfactory. With regard to the clarification sought by the then Hon'ble Upalokayukta it is referred in the report of PW-1 and 2 marked as Exhibit P-37 and 36 that flowing of water by force as a result of unexpected rain or flowing of water at the bottom upper portion of the cement would be damaged resulting in causing scattered patches on the surface of the concrete bed. Further the report of PW-2 marked as Exhibit P-36 clearly mentions this. Relevant portion is extracted hereunder; “ it is to submit here that for the

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purpose just that flowing of rain water alone (on the crap of stilling bed) if the top of concrete of surface gets damaged without any hesitation, it can be construed that tank concrete layer of stilling basin being worst in nature if such is the quality of concrete the whole of such concrete involved in construction of the said stilling basin will be damaged in no time due to (emerged kinetic energy) as soon as water starts flowing towards the spilling way” and further it is seen from the clarification report of PW-2, Chief Engineer submitted in Exhibit P-36 replying to the query of the then Hon’ble Upalokayukta that whether the flowing of water alone can damage concrete surface of the tank bed constructed? notes of PW-2 Chief Engineer appear to be not firm in his opinion and his notes lacks precision. However, PW-2 in his further clarification notes marked as Exhibit P-52 noted mention in para 76 to 81 submitted in his detailed report particularly para 80 which is found proper to be reproduced;

*Which is as under “so notes context but certain expenses furnished in Inspection Officer can be accepted if it here to the reasons furnished relating to damage top layer of stilling bed”.*

28. Bare reading of above para relating to clearificatory notes of Chief Engineer, PW-2 makes it clear that technical expert report that Exp 37 submitted by PW-1 to certain extent can be accepted. Further in his report he has referred in para 81 that it is seen that “it is to submit here that for all the purpose just flowing of

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rain water “on the top surface of stilling basin” if the top concrete surface gets damaged without any hesitation can be construed that the top concrete layer of the stilling basin was worst in nature (and further it is also felt that if such is the quality of concrete) the whole of such concrete provided in the surface of the said stilling bed will be damaged in not time (due to emerged Kinetic Energy) as so as water transforming and further against of the time stilling basin is filled with water”. However, at the same time, it is felt that, such circumstances (situation) normally will never occur, as most of the time, the Stilling Basin is filled with water.

29. In view of the above, the clear report of PW-2 Chief Engineer if read comprehensively at one stretch he opines that, Stilling Basin will be constructed abutting the toe of the dam adjacent to waste weir to prevent erosion of dam at spillway and however, at the same time opines that, the report submitted by PW-1 that the upper concrete layer portion of Stilling Basin normally get damaged resulting in appearance of scattered patches because of flow of water over spilling way/waste weir of the dam, when the potential energy is converted into kinetic energy, if the force occurs by kinetic energy is not dissipated, before it impacts the ground/structure, the energy stored in the water, would definitely damage (scour) the ground/structure (whichever the case may be) and in turn erode (undermine) dam's toe, on its downstream.

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30. However, in the end, PW-2 Chief Engineer opines that in such circumstances, normally it never occurs. Whereas if the admissions seen in examination of PW-2 it is seen that he is aware of the fact that PW-1 Engineer has examined waste weir stilling basin and admits that in the month of August-2011 unforeseen rain resulted in excess flow of water and he is aware about energy flow of water over the constructed waste weir stilling basin due to heavy rain.
31. After, close evaluation the evidence of PW-1 and 2 who are Executive Engineer and Chief Engineer respectively it is clearly seen that the basic structure of the stilling basin constructed is not substantially damaged, but the converts surface as seen with scattered patches which may be due to one of the reasons of flowing water due to heavy rain and after conversion potential energy into kinetic energy.
32. However, it can be assessed with the delicate view that, once potential energy is released it will be converted into kinetic energy i.e., water released from the higher level flowing on the spillway then reaching the stilling basin in between that length of flowing of water it will produce kinetic energy which may in all probability damage surface of the concrete bed of stilling basin. However, it cannot be lost sight of the fact that evidence of PW-2 i.e., Chief Engineer who has submitted the report was only on the basis of the available records and the records submitted by PW-1 at Ex.P-37.

  
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33. Evidence of PW-1 is also corroborated with confirmed truth with regard NDT test (Rebound Hammer Test) marked at Exhibit-P-31 signed by Technical Manager providing details of the location test conducted at waste weir stilling basin and Ex.P-42 discloses about quality of work of waste weir stilling basin enclosed with seven photographs marked at Ex.P-43 to 50.
34. Thus, it can be inferred that, damage caused to the stilling basin of water tank was not direct impact of low quality of construction work and resulting in appearance of scattered patches on upper surface of the stilling basin.
35. Evidence of PW-3 who has submitted the complaint is examined by the presenting officer. It is felt that it is not proper to take up credibility of evidence of PW-3 for discussion and taking it as a aid to prove article of charges against the DGO's as he has turned hostile.
36. With regard to payments made to the contractor by way of passing the bills, in this regard DGO's have taken contention that, damaged portion of waste weir stilling basin was measured, estimated and deducted from pre/final contract certificate it is mentioned in payment of part bill dated in 11/07/2012 in MB bill No.337 at page no.7 to 12. However, recovering of meeting expenses from to the contractor is not a fact in issue or part of the articles of charges.
37. So to sum up, close assessment of the evidence of PW-1 Executive Engineer, reveals that, he has inspected the concrete

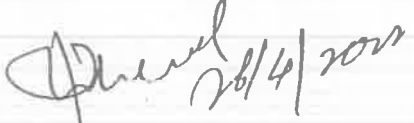
*Shree*  
28/4/2022

bed and has submitted report at Ex.P-37 which is contrary to the allegations made in the complaint.

PW-2 Chief Engineer has submitted clarifications opinion admitting that potential energy if released shall produce kinetic energy and the kinetic energy may cause such damage to the waste weir stilling bed resulting in scattered patches on the upper layer of concrete bed. PW-3 complainant filed a memo to withdraw the complaint dated 30/10/2012, as not pressed and was present at the time of conducting inspection or examination of tank bed and available records also disclose and elicit that the damage in the form of scattered patches on the waste upper layer weir stilling bed was not direct result of substandard concrete construction. In view the discussion made above it can be concluded that above said DGO-1 to 5 have not committed any misconduct and have failed to maintain absolute integrity and committed dereliction of duty resulting in the act of unbecoming of public servant and cannot be held liable for misconduct as public servant as contemplated in rule 3(1) of KCS (CCA) Conduct Rules, 1966. In the result above point for consideration is '**Negative**' and proceed to pass the following;

### **ORDER**

The Disciplinary Authority has not proved the charges leveled against the Delinquent Government Officials (1) Sri Maruthi Gokale, Executive Engineer, Minor Irrigation Sub-Division, Bidar, (2) Sri Shivaputra Kalagi, Executive Engineer, Minor Irrigation Sub-Division, Bidar, (3) Sri

  
26/4/2012

Machendra Khagonda Assistant Executive Engineer, PWD sub-division, Basavakalyana, Bidar, (4) Sri Chandrakanth Merje, Assistant Executive Engineer, Panchayath Engineering Division, Bidar and 5) Sri Ashok Khemashetty, Assistant Engineer-2, Minor Irrigation Sub-Division, Bidar.

Submitted to His Lordship Hon'ble Upalokayukta-1 for further action in the matter.

*Rajashakar V. Patil 28/4/2016*  
 (Rajashakar V. Patil)  
 Additional Registrar Enquiries-8  
 Karnataka Lokayukta,  
 Bengaluru.

### **ANNEXURES**

#### **1. LIST OF WITNESSES EXAMINED ON BEHALF OF DISCIPLINARY AUTHORITY:**

|     |                                                                                                                                                          |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| PW1 | Sri C.N. Anand, S/o Nagaraj C.S, Retired Executive Engineer, TAC, Karnataka Lokayukata, Bengaluru, R/o # 3524, 7th cross, Gayathri Nagara, Bengaluru-21. |
| PW2 | Sri B.R.Anilkumar, S/o B.R.Swamy, Chief Engineer, Quality Assurance Zone, PWD Department, K.R.Circle, Bengaluru-560046.                                  |
| PW3 | Sri Jeevan Rao, S/o Madhava Rao Sindhe, Agriculturist R/o Belakune, Bhupalagada, Aurad B Taluk, Bidar District.                                          |

*Rajashakar V. Patil 28/4*

**2. LIST OF WITNESSES EXAMINED ON BEHALF OF DELINQUENT GOVERNMENT OFFICIAL:**

|     |                                                                                                                                                       |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| DW1 | Sri Kalagi Shivaputra, S/o Pandith Rao, Executive Engineer, KBJNL, Jevargi, R/o Flat No.8., Santhosh Colony, Jevargi Road, Kalaburgi dated:07.11.2018 |
| DW2 | Sri Maruthi Gokhale, Retired Executive Engineer, R/o H.No.2-907/26-B, Gubbi Colony, Kalaburgi District dated:17.11.2018                               |
| DW3 | Sri Machendra Khandagonda, S/o Sri. Ramachandrappa, Assistant Executive Engineer, PWD Sub-Division. Humnabhad, Bidar District dated:28.12.2018        |
| DW4 | Sri.Chandrakantha, S/o Sri. Siddappa Virche, Retired Executive Engineer, PWD Sub-Division, Humnabhad, Bidar District dated:28.12.2018                 |
| DW5 | Sri. Ashik Khemashetty, S/o Khashappa Khemashetty, Assistant Engineer, PWD Sub-Division, Humnabhad, Bidar District dated:28.12.2018                   |

**3. LIST OF DOCUMENTS MARKED ON BEHALF OF DISCIPLINARY AUTHORITY:**

|       |                                                                                      |
|-------|--------------------------------------------------------------------------------------|
| Ex.P1 | FORM NO.1 (complaint)                                                                |
| Ex.P2 | FORM NO.II (Complainant's Affidavit)                                                 |
| Ex.P3 | Complaint dated: 17.01.2012 of PW3 addressed to Registrar, KLA, Bengaluru (original) |
| Ex.P4 | Details of the work, Index and abstract of estimated cost of improving canal         |

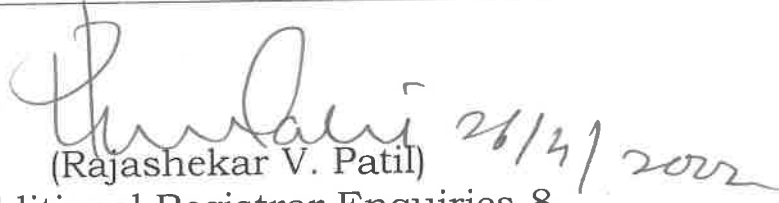
*R. K. Kulkarni*  
20/11/2018

|                         |                                                                                                                                                                            |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ex.P5                   | Spot Mahazar (original)                                                                                                                                                    |
| Ex.P6 to<br>P 35        | Photographs                                                                                                                                                                |
| Ex.P36<br>Ex.P36(A)     | Attested copy of MB Book                                                                                                                                                   |
| Ex.P37                  | Part of Report of I.O.                                                                                                                                                     |
| Ex.P38                  | Part of Report of I.O.                                                                                                                                                     |
| Ex.P39                  | Copy of note sheet                                                                                                                                                         |
| Ex.P40                  | Letter dated:12.07.2013 of Executive Engineer, Minor Irrigation Division, Bidar addressed to Investigation Officer and Assistant Executive Engineer-3, TAC, KLA, Bengaluru |
| Ex.P41                  | Report of N.D.T test (Rebound Hammer Test) dated 01/07/2013                                                                                                                |
| Ex.P42                  | Report of N.D.T test (Rebound Hammer Test) dated 01/07/2013                                                                                                                |
| Ex.P43 to<br>Ex.P49     | Photographs                                                                                                                                                                |
| Ex.P50<br>And<br>Ex.P51 | Part of the note sheet of Chief Engineer (B.R. Anil Kumar)                                                                                                                 |
| Ex.P52                  | Part of the Report of Chief Engineer (B.R. Anil Kumar)                                                                                                                     |
| Ex.P53                  | Complaint dated: 19.05.2012 of PW3 addressed to ARE-7, Karnataka Lokayukta, Bengaluru                                                                                      |
| Ex.P54                  | Xerox copy of Contract Certificate                                                                                                                                         |
| Ex.P55                  | Attested copy of MB book                                                                                                                                                   |

*Handwritten signature and date: 20/4/2014*

**4. LIST OF DOCUMENTS MARKED ON BEHALF OF DELINQUENT GOVERNMENT OFFICIAL:**

|       |                                                                                                              |
|-------|--------------------------------------------------------------------------------------------------------------|
| Ex.D1 | Xerox copy of Complaint dated:30.10.2012 of PW3 addressed to the Hon'ble Registrar, KLA, Bengaluru           |
| Ex.D2 | Xerox copy of FORM NO.II (Complainant's Affidavit)                                                           |
| Ex.D3 | Xerox copy of Karnataka State Natural Disaster Monitoring Centre Rainfall Pattern in Bidar for the year 2011 |

  
 (Rajashekar V. Patil) 26/4/2022  
 Additional Registrar Enquiries-8  
 Karnataka Lokayukta,  
 Bengaluru.

Date of retirement of DGO1: 30.04.2017  
 Date of retirement of DGO2: 31.10.2020  
 Date of retirement of DGO3: 31.07.2022  
 Date of retirement of DGO4: 30.09.2016  
 Date of retirement of DGO5: 30.06.2023

