

GOVERNMENT OF KARNATAKA



KARNATAKA LOKAYUKTA

No.UPLOK-1/DE/340/2016/ARE-8

Multi Storied Buildings,
Dr.B.R.Ambedkar Veedhi,
Bengaluru-560 001,
Date: **29/10/2020**

RECOMMENDATION

Sub:- Departmental inquiry against;

- 1) Sri Kashinatha Jadage, Secretary, Halbarga Gram Panchayath, Bhalki Taluk, Bidar District;
- 2) Sri Shiva Kumar, Junior Engineer, Panchayath Raj Engineering Sub-Division, Bhalki Taluk, Bidar District;
- 3) Sri Gunawantha Suryavamshi, Junior Engineer, Panchayath Raj Engineering Sub-Division, Bhalki Taluk, Bidar District.

- Rcf:-1) Government Order No. ಗ್ರಾಅಪ 78 ಇಎನ್‌ಕ್ಯೂ 2016 Bengaluru dated 26/08/2016.
- 2) Nomination order No.UPLOK-1/DE/340/2016 Bengaluru dated 30/08/2016 of Upalokayukta-1, State of Karnataka, Bengaluru.
 - 3) Inquiry Report dated 27/10/2020 of Additional Registrar of Enquiries-8, Karnataka Lokayukta, Bengaluru.

The Government by its Order dated 26/08/2016 initiated the disciplinary proceedings against (1) Sri Kashinatha Jadage, Secretary, Halbarga Gram Panchayath, Bhalki Taluk, Bidar District; (2) Sri Shiva Kumar, Junior Engineer, Panchayath Raj Engineering Sub-Division, Bhalki Taluk, Bidar District and (3) Sri Gunawantha Suryavamshi, Junior Engineer, Panchayath Raj Engineering Sub-Division, Bhalki Taluk, Bidar District (hereinafter referred to as Delinquent Government Officials 1 to 3 for short as (DGO-1, DGO-2 & DGO-3 respectively) and entrusted the Departmental Inquiry to this Institution.

2. This Institution by Nomination Order No.UPLOK-1/DE/340/2016 dated 30/08/2016 nominated Additional Registrar of Enquiries-8, Karnataka Lokayukta, Bengaluru, as the Inquiry Officer to frame charges and to conduct Departmental Inquiry against DGOs 1 to 3 for the alleged charge of misconduct, said to have been committed by them.

3. The DGO-1 Sri Kashinatha Jadage, Secretary, Halbarga Gram Panchayath, Bhalki Taluk, Bidar District; DGO-2 Sri Shiva Kumar, Junior Engineer, Panchayath Raj Engineering Sub-Division, Bhalki Taluk, Bidar District and DGO-3 Sri Gunawantha Suryavamshi, Junior Engineer, Panchayath Raj Engineering Sub-Division, Bhalki Taluk, Bidar District were tried for the following charge:-

“That, in the bill of cost dt: nil for Rs.99,204/-, the claim is made by the Contractor for Rs.99,204/- towards hire charges of JCB towards construction of Gokatte near Halaburga and the same has been certified by the J.E and A.E.E (DGO-2 & 3). But, as seen from action plan of Halabarga Gram Panchayath for the year 2006-07, an amount of Rs.3,80,000/- has been shown as estimated cost towards excavation of Gokatta in Halbarga Gram Panchayath and an amount of Rs.2,80,000/- is shown towards wages and an amount of Rs.1,52,000/- is shown towards materials. But, the amount of Rs.99,204/- paid towards JCB hire charges has not been shown in the action plan and thereby you – DGO Nos. 1 to 3 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 3 committed

misconduct as enumerated under Rule 3(1) of Karnataka Civil Services (Conduct) Rules, 1966.

4. The Inquiry Officer (Additional Registrar of Enquiries-8) on proper appreciation of oral and documentary evidence has held that the Disciplinary Authority has proved the above charge against DGO-1 Sri Kashinatha Jadage, Secretary, Halbarga Gram Panchayath, Bhalki Taluk, Bidar District; DGO-2 Sri Shiva Kumar, Junior Engineer, Panchayath Raj Engineering Sub-Division, Bhalki Taluk, Bidar District and DGO-3 Sri Gunawantha Suryavamshi, Junior Engineer, Panchayath Raj Engineering Sub-Division, Bhalki Taluk, Bidar District.

5. The inquiry officer has held that DGOs 1 to 3 had engaged JCB to implement the work under NREGA scheme, which is in violation of NREGA Regulations, to help the contractor. The sum of Rs.99,204/- paid by DGOs 1 to 3 to the contractor towards JCB is diversion of funds and causing loss to the State exchequer.

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 to 3;


- i) DGO-1 Sri Kashinatha Jadage has retired from service on 30/06/2013;
- ii) DGO-2 Sri Shiva Kumar is due to retire from service on 31/05/2028;
- iii) DGO-3 Sri Gunawantha Suryavamshi is due to retire from service on 31/05/2022;

8. Having regard to the nature of charge proved against DGO-1 Sri Kashinatha Jadage, DGO-2 Sri Shiva Kumar and DGO-3 Sri Gunawantha Suryavamshi;

- i) It is hereby recommended to the Government for imposing penalty of recovering a sum of Rs.33,068/- from the pension payable to DGO-1 Sri Kashinatha Jadage, Secretary, Halbarga Gram Panchayath, Bhalki Taluk, Bidar District;
- ii) It is hereby recommended to the Government for imposing penalty of recovering a sum of Rs.33,068/- from the salary and allowances payable to DGO-2 Sri Shiva Kumar, Junior Engineer, Panchayath Raj Engineering Sub-Division, Bhalki Taluk, Bidar District;
- iii) It is hereby recommended to the Government for imposing penalty of recovering a sum of Rs.33,068/- from the salary and allowances payable to DGO-3 Sri Gunawantha Suryavamshi, Junior Engineer, Panchayath Raj Engineering Sub-Division, Bhalki Taluk, Bidar District. If the above amount cannot be recovered from the salary and allowances, the same shall be recovered from the pensionary benefits payable to DGO-3 Sri Gunawantha Suryavamshi.

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

Connected records are enclosed herewith.


(JUSTICE N. ANANDA)
Upalokayukta-1,
State of Karnataka, Bengaluru. 29/10

KARNATAKA LOKAYUKTA

No:Uplok-1/DE/340/2016/ARE-8

M.S.Building
Dr.B.R.Ambedkar Veedhi
Bengaluru - 560001
Dated: 27-10- 2020.

ENQUIRY REPORT

Sub; Departmental Enquiry against:

1). Sri.Kashin ath Jadage, Secretary,
Halburga Grama Panchayath, Bhalki
Taluk, Bidar District.

2). Sri.Shivakumar, Junior Engineer,
Panchayath Raj Engineering Sub-
Division, Bhalki Taluk, Bidar District.

3).Sri.Gunawantha Suryavamshi, Junior
Engineer, Panchayath Raj Engineering
Sub-Division, Bhalki Taluk, Bidar District
- Reg.

Ref: 1. G.O.No: ಗ್ರಾಅಪ 78 ಇಎನ್‌ಕ್ಯೂ 2016 ಬೆಂಗಳೂರು
dated; 26.08.2016.

2. Nomination Order No.Uplok-
1/DE/340/2016, Bengaluru, Dated;
30.08.2016 of Hon'ble Upalokayukta - 1.

The Departmental Enquiry is initiated against 1.
Sri.Kashin ath Jadage, Secretary, Halabarga Grama Panchayath,
Bhalki Taluk Bidar District, 2. Sri.Shivakumar, Junior Engineer,
Panchayath Raj Engineering Sub-Division, Bhalki Taluk Bidar

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27/10

Distirct and 3. Sri.Gunawantha Suryavamshi, Junior Engineer, Panchayath RaJ Engineering Sub-Division, Bhalki Taluk, Bidar District (hereinafter referred to as the Delinquent Government Officials 1 to 3 in short DGO.1 to 3) .

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 3.

3. The Substance of Imputations of misconduct against the Delinquent Government Officials 1 to 3 is as follows.

The complainant Sri.Shivapalasingh S. Takur of Halabarga, Bhalki Taluk, Bidar District filed complaint on 30.09.2008 before Karnataka Lokayukta in the prescribed format FORM No.1 (complaint)-Ex.P1, FORM No.2 (Complainants Affidavit)-Ex.P2 and the complaint-Ex.P3 alleging that the Delinquent Government Officials 1 to 3 have misappropriated the grants released under National Rural Employment Guarantee Scheme (In short NREG Scheme) by creating bogus bills for Rs.6,00,000/- without executing the work and without providing job to the rural unskilled labourers as guaranteed under the Act. The Hon'ble Upalokayukta-1 took up investigation under section 9 of Karnataka Lokayukta Act, 1984. The investigation conducted by the Hon'ble Upalokayukta-1 would reveal that a bill of cost dated ; nil for Rs.99,204/-, the claim is made by the contractor for Rs.99,204/- towards hire charges of JCB towards construction of Gokatta near Halabarga and the same has been certified by DGO

WAS
27/10

1 & 2. The action plan of Halabarga Grama Panchayath for the year 2006-2007, an amount of Rs.3,80,000/- has been shown as estimated cost towards excavation of Gokatta in Halabarga Grama Panchayath, and an amount of Rs.2,80,000/- is shown towards wages and an amount of Rs.1,52,000/- is shown towards materials. But an amount of Rs.99,204/- paid towards JCB hire charges which has not been shown in the action plan. The DGO.1 to 3 engaged JCB which is not in the action plan and the same is against to the provisions of NAREG Scheme, thereby deprived the employment of unskilled labourers. The act of DGO.1 to 3 amounts to lack of integrity and lack of devotion to duty.

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.1 to 3 for their appearance and to submit their written statement of defence. The Delinquent Government Officials 1 to 3 appeared before this authority pursuant to service of Articles of Charge. The Plea (FOS) was recorded, the DGO. 1 to 3 pleaded not guilty and claimed enquiry into the matter. The Articles of Charge framed against DGO.1 to 3 is as follows.

“That in the bill of cost Dt; Nil for Rs.99,204/- the claim is made by the contractor for Rs.99,204/- towards hire charges of JCB towards construction of Gokatta near Halabarga and the same has been certified by JE and AEE (DGO.2 & 3). But as seen from action plan of

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27/10

Halabarga Grama Panchayath for the year 2006-2007, an amount of Rs.3,80,000/- has been shown as estimated cost towards excavation of Gokatta in Halabarga Grama Panchayath and an amount of Rs.2,80,000/- is shown as towards wages and an amount of Rs.1,52,000/- is shown towards materials. But the amount of Rs.99,204/- paid towards JCB hire charges which has not been shown in the action plan and thereby you DGO.1 to 3 failed to maintain absolute integrity and devotion to duty, the act of which is unbecoming of Public/Government Servant and have committed misconduct under rule 3 (1) of KCS (Conduct) Rules, 1966 .”

5. The DGO.1 and 2 filed written statement of defence denying all the allegations made against them besides contending that the amount of Rs.99,204/- paid towards JCB hire charges has not been shown in the action plan. The AEE- Sri.Mohammed Zafrulla, TAC of Karnataka Lokayukta visited the spot on 19.01.2012 and inspected the spot mentioned in the complaint by the complainant and submitted report. The JCB was engaged for removal of hard soil found during the work of Gokatta. The engagement of JCB was not shown in the action plan as the hard soil was not expected. The Grama Panchayath Engineer submitted bills based on the certificate of Executive Officer, Taluk Panchayath who verified the work after completion. They submitted the bills through the President; Grama Panchayath as the measurements given by the Engineer was tallied with the

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27/10

measurements of work done. The president signed the bills without raising any objection. The complainant instead of recourse to the remedy of preferring appeal came with this complaint and the same is barred under section 8 (1) (a) (b) of K.L.Act, 1984.

6. The DGO.3 filed written statement of defence denying all the allegations made against him besides contending that he has not entrusted with the work of Gokatta in Halabarga Grama Panchayath. He has not played any role in the construction of Gokatta in Halabarga Grama Panchayath and has not signed any bill or wrote MB book. He is not responsible for the payment of the alleged bill of Rs.99,204/- paid towards charges of JCB, and not signatory to the said bill and the preparation of action plan. He did not deny that he was working in the Bhalki PRED Sub-Division as Junior Engineer. He has not caused any loss to the Government by misuse and misappropriation of funds and prays to drop proceedings against him.

7. The Presenting officer to prove the misconduct of the Delinquent Government Officials.1 to 3 has examined two witnesses as PW1 and PW2 got marked Ex.P1 to Ex.P11. The second oral statements of the Delinquent Government Officials.1 to 3 were recorded under Rule 11 (18) C.C.A.Rules. The Delinquent Government Officials.1 to 3 denied the evidence appears against them.

8. The DGOs.3 and 2 examined themselves as DW1 and DW2 in support of their defence, got marked Ex.D1 to Ex.D5.

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27/10

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9. Heard the arguments of Presenting Officer appearing for disciplinary authority. Perused the written arguments submitted by the DGO.1 to 3 on 07.09.2019, 14.08.2019 and 25.07.2019.

10. The point that arises for my consideration is as follows.

“Whether the Disciplinary Authority has proved the charges framed against Delinquent Government Officials.1 to 3”

11. My answer to the above point is in the 'Affirmative ' for the following reasons.

REASONS

12. Before considering the evidence placed on record by the disciplinary authority and the defence, it is necessary to narrate the case of the disciplinary authority. The Government released a sum of Rs. 6,00,000/- to Grama Panchayath Halaburga, Balki Taluk, Bidar District to provide employment (unskilled manual work) to poor rural households under the scheme NAREGA for the years 2005-2006, 2006-2007, 2007-2008. The DGO.1 was the Secretary of Grama Panchayath said to have monitored the work entrusted under the Scheme by the District Programme Coordinator. The DGO 2 & 3 stated to be the Junior Engineers working in Panchayath Raj Sub-division, Balki, Bidar District were entrusted to execute and supervise the works within the jurisdiction of Grama Panchayath by providing employment to every poor household whose adult members volunteered to do unskilled manual work not less than 100 days of such works.

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27/10

13. During the year 2006-2007 the DGO.1 to 3 engaged JCB for hire towards construction of Gokatta near Halaburga and a sum of Rs. 99,204/- was paid to the contractor out of the amount release under NAREGA Scheme without being authorized in the action plan. The DGO.1 to 3 took a decision to carry out the work through machinery bypassing the manual unskilled labour work as stipulated under the scheme. The DGO.1 & 2 denied the assertion of the disciplinary authority that they bypassed the method of employment provided under the scheme. It is contended by them that JCB was used to excavate the hard soil while doing work of Gokatta and not expected the hard soil at the time of action plan during the year 2006-2007. The DGO.3 denied the entrustment of construction work of Gokatta as JE and forwarding of bill for Rs. 99,204/- to the contractor towards hire charges and writing of MB book.

14. Admittedly DGO.1 was the Secretary of Halaburga Grama Panchayath and DGO.2 was JE supervising the construction work of Gokatta, Halaburga Grama Panchayath during the year 2005-2006, 2006-2007, 2007-2008. The DGO.3 denied that he discharged duty as JE and looked after construction work of Gokatta, Halaburga Grama Panchayath. Let me consider the evidence placed on record both oral and documentary by the disciplinary authority and DGO.1 to 3.

15. PW1 is the AEE working in Technical Audit Cell, Karnataka Lokayukta at the relevant point of time. It is in the evidence of PW1 that he visited the alleged place of work done by the DGO.1

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27/10

to 3 during the year 2007-2008 and verified the same. The documents EX.P1 to P9 are marked through PW1. According to PW1 a sum of Rs. 6,00,000/- was released under NAREGA Scheme in favour of Grama Panchayath Halaburga to carry out the construction work through unskilled labourer for providing not less than 100 days of guaranteed employment in a financial year to every house hold in the rural areas. There is nothing on record placed by the complainant to substantiate his grievance in respect of the works done during the year 2005-2006 and 2007-2008.

16. During investigation conducted by Hon'ble Upalokayukta-1 under section 9 of Karnataka Lokayukta Act found using JCB at the time of construction of Gokatta for removing soil which is not in the action plan and against to the norms of NREG Scheme. The complainant by name Shivapalasingh Takur is examined as PW2. The evidence of PW2 is contrary to the case of the disciplinary authority. PW2 denied the contents of Ex.P1 to P4 and his signatures found therein. PW2 admits the receipt of notice sent by this office. Looking to the version of PW2 as stated during cross examination, probably PW2 gone back in supporting the case of the disciplinary authority in order to help DGO.1 to 3. Therefore under the circumstances the entire case of the disciplinary authority cannot be thrown out mere because PW2 turned hostile.

17. It is to be noted that the DGO.1 & 2 have not disputed the fact that the construction work entrusted falls within the ambit of


27/10

National Rural Employment Guarantee Act. The intention of the Legislature to enact the Mahatma Gandhi National Rural Employment Guarantee Act 2005 is to provide at least 100 days of guaranteed wage employment to every poor household whose adult members volunteer to do unskilled manual works. It is the duty of the executives to implement the schemes introduced under MANAREGA, Act 2005. It is in the evidence of PW1, DW1 & 2 that DGO.1 to 3 were in charge of construction work of Gokatta, Halaburga Grama Panchayath introduced under the NAREGA Scheme. DGO.1 to 3 spent Rs. 99,204/- towards hire charges of JCB and the said amount was paid to the contractor. As per the provisions of the Act the amount of Rs.99,204/- should go to the unskilled labourers in the said area.

18. It is in the evidence of DW2 that the JCB was used to remove the hard soil found at the time of construction which they have not expected. It is to be noted that the action plan did not direct the DGO.1 to 3 to engage JCB to implement the construction work. There is nothing on record placed by DGO.1 to 3 to show that they have taken steps to introduce the use of JCB instead of manual work in the action plan on the ground that the soil is hard which was not expected at the time of commencement of construction work and preparation of action plan. It is crystal clear that the DGO.1 to 3 engaged the machinery in the construction work in place of unskilled labourers whose employment is guaranteed under the Act of 2005. Thus the right of unskilled labourers is affected and deprived of wage amounting to Rs. 99,204/- during the year

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27/10

2006 & 2007. The Act of DGO.1 to 3 in ignoring the provisions of MGNAREGA Act 2005 amounts to dereliction of their duties and lack of devotion.

19. It is seen from the evidence of DW1 that he has not produced Ex.D1 to D5 at the time of scrutiny. It is further seen from the cross examination of DW1 that he has not submitted the comments at the time of scrutiny. The record reveals that DGO.3 was working as JE in PRED sub division, Bhalki Taluk. There is no reason as to why DGO.3 slept over the matter at the time of scrutiny. It is seen from the written statement of DGO.3 and the oral evidence of DW1 that DGO.3 was working as JE in engineering division of Zilla Panchayath, Bidar District. It is the CEO of the district will initiate transfer proceedings of Engineers who are working in the engineering division of Zilla Panchayath to the required places in the entire district. It is the District Programme Coordinator under MGNAREGA Act, 2005 is competent to speak about the official work assigned to the engineers or any other officials of Grama Panchayath. DGO.3 ought to have placed the name of the engineer who was working at that time, if really he was not working at that time. Ex.D1 to Ex.D5 does not disclose the name of any other engineer working at that time. There is no oral evidence to prove the contents of Ex.D1 to Ex.D5. Therefore Ex.D1 to Ex.D5 cannot be held to be proved and be relied upon. The evidence of PW1 as deposed during cross-examination cannot hold to be an admission for the reason that he is not a competent person to speak about the same as he is a technical person of Karnataka Lokayukta. Thus

23/10

Ex.D1 to D5 will not enure to the case of DGO.3. The evidence on record establishes the fact that DGO.3 was discharging his official duty at Gokatta, Halaburga Grama Panchayath and liable for engaging JCB in violation to the NAREGA scheme.

20. Therefore in view of foregoing reasons and under the circumstances it is held that the disciplinary authority establishes the fact that DGO.1 to 3 being a public servants have violated the spirit of the scheme introduced under the MANAREGA Act 2005 in engaging JCB in place of manual labour work in construction of Gokatta during the year 2006 - 2007 and deprived the right of employment of poor unskilled labour of the rural area of Halaburga Grama Panchayath. Thereby failed to maintain absolute integrity and devotion to duty, the act of which is unbecoming of Public/Government servants and liable for professional misconduct under rule 3(1) of KCS (Conduct) Rules, 1966. Hence I answered the above point in the 'Affirmative' and proceed to pass the following.

ORDER

The Disciplinary Authority has proved the charges leveled against the Delinquent Government Officials

1. Sri. Kashinath Jadage, Secretary, Halburga Grama Panchayath, Bhalki Taluk, Bidar District.
2. Sri.Shivakumar, Junior Engineer, Panchayath Raj Engineering Sub-Division, Bhalki Taluk, Bidar District.
- 3).Sri.Gunawantha Suryavamshi, Junior


27/10

Engineer, Panchayath Raj Engineering
Sub-Division, Bhalki Taluk, Bidar District.

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


(AMARANARAYANA.K) 23/10/2020

Additional Registrar Enquiries - 8
Karnataka Lokayukta, Bengaluru.

ANNEXURES

I) LIST OF WITNESSES EXAMINED ON BEHALF OF D.A:

PW1	Sri. Mohammad Jafarulla S/o Abdul Salam, Retired AEE, KUIDFC, Bangalore dated 07/02/2018
PW2	Sri.Shivapalasingh Thakur S/o Shankarsingh, Agriculturist, Balki taluk, Bidar district dated 20/12/2018

II) LIST OF WITNESSES EXAMINED ON BEHALF OF DGO:

DW1	Sri. Gunawanth Suryavamshi, Junior Engineer, Minor Irrigation Division, Bidar district dated 06/02/2019
DW2	Sri. Shivakumar Vithal Rao, J.E., RWS Sub Division, Humnabad, Bidar, dated 29/04/2019

III) LIST OF DOCUMENTS MARKED ON BEHALF OF D.A:

Ex.P1	FORM No.1 (complaint).
Ex.P2	FORM No.2 (complainant's Affidavit).

Ex.P3	Complaint of Shivapala Singh S.Takur.
Ex.P4	Enclosures of complaint.
Ex.P5	Objections of DGO.1 to 3 & another.
Ex.P6	Rejoinder of complainant.
Ex.P7	Rejoinder of complainant.
Ex.P8	Mohazar
Ex.P8(A)	Copy of plan of action.
Ex.P9	Report submitted by PW1.
Ex.P10	Copy of bail bond.
Ex.P11	Authorization letter of PW2.

IV) LIST OF DOCUMENTS MARKED ON BEHALF OF DGO:

Ex.D1	Requisition letter of DGO.3
Ex.D2	Certificate issued by PDO, Halaburga Grama Panchayath.
Ex.D3	Transfer proceedings of DGO.3
Ex.D4	Transfer proceedings of DGO.3
Ex.D5	Transfer proceedings of DGO.3

(AMARANARAYANA.K)

Additional Registrar Enquiries-8
Karnataka Lokayukta,
Bengaluru.

27/10/2020

