

KARNATAKA LOKAYUKTA

No. UPLOK-1/DE/376/2016/ARE-10

M.S. Building
Dr.B.R. Ambedkar Road
Bangalore-560 001
Date: 27/1/2018

ENQUIRY REPORT

Present : Sri. S. Gopalappa
Additional Registrar of Enquiries-10
Karnataka Lokayukta
Bangalore

Sub: Departmental Inquiry against Sriyuths :

1. Kalagi Shivputra, Executive Engineer, Minor Irrigation Division, Kalburgi.
2. T. Jayanandam, (**Now Retired**) Executive Engineer, Minor Irrigation Division, Kalburgi
3. S S Kuganoor, Assistant Executive Engineer, Minor Irrigation Division, Kalburgi (presently working at Zilla Panchayath, Indi Taluk, Vijayapura District) and
4. Ashok Ambalgi, Assistant Executive Engineer, Minor Irrigation Division, Afzalpur (presently working at Zilla Panchayath, Alanda, Kalburgi District)-reg.,

- Ref:** 1. Report u/s 12(3) of the K.L Act, 1984 in
Compt/Uplok/GLB/157/2010/DRE-3
dt. 11.7.2016
2. Govt. Order No. SaNeeE 49 SeEV 2016
dt. 8.9.2016
 3. Nomination order No. Uplok-1/DE/376/2016
Bangalore dt. 16.9.2016 of Hon'ble Upalokayukta-1

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1. On the basis of the complaint filed by Sri. Mallikarjun R/o Gulbarga District against the DGOs alleging misconduct, an investigation was taken up. The complaint was referred to the Chief Engineer, TAC, KLA, Bangalore, who inturn referred the matter for

investigation to Assistant Executive Engineer –II. Accordingly after investigation, AEE-II (I.O. for short) has submitted the report.

2. After completion of the investigation, a report was sent to the Government u/S 12(3) of the Karnataka Lokayukta Act as per reference No. 1. In pursuance of the report, Government was pleased to issue the GO dt. 8.9.2016 authorizing Hon'ble Upalokayukta to hold enquiry as per reference no. 2. Hence, in pursuance of the GO, nomination was issued by Hon'ble Upalokayukta on 16.9.2016 authorizing ARE-10 to hold enquiry and report as per reference No. 3.

3. On the basis of the nomination, AOC was prepared under Rule 11(3) of the KCS (CCA) Rules, 1957 and was sent to the DGOs on 8.12.2016.

ANNEXURE NO. 1
CHARGE

4. That, you DGO –1. Sri. Kalagi Shivputra, Executive Engineer, Minor Irrigation Division, Kalburgi, you DGO 2 -Sri. T. Jayanandam, Executive Engineer, Minor Irrigation Division, Kalburgi (presently Minor Irrigation Division, Bidar), you DGO 3- Sri. S S Kuganoor, Assistant Executive Engineer, Minor Irrigation Division, Kalburgi (presently working at Zilla Panchayath, Indi Taluk, Vijayapura District) and you DGO 4 – Sri. Ashok Ambalgi, Assistant Executive Engineer, Minor Irrigation Division, Afzalpur (presently working at Zilla Panchayath, Alanda, Kalburgi District) caused delay in executing barrage work across Bennithora river near Kamalanagar village, though the work had to be completed within 10 months from the date of tender contract agreement with the contractor i.e., 8.7.2008, the

work has been completed in all respect in the year 2011. Even if the major portion of the work is completed in September 2009, there is delay of 4 months in completing the major portion of work.

Thereby you DGOs 1 to 4, being Government /public servants have failed to maintain absolute integrity besides devotion to duty and acted in a manner unbecoming of Government servants and thus committed misconduct as enumerated U/R 3(1) of Karnataka Civil Service (Conduct) Rules 1966.

ANNEXURE NO. II
STATEMENT OF IMPUTATIONS OF MISCONDUCT

5. According to the complainant : The barrage across Bennithora river near Kandanager village has not been constructed within the time specified and as a result the purpose of constructing the barrage has not been served for the public and the work executed is of substandard and public money has been misappropriated by the Assistant Executive Engineer, Minor Irrigation Department, Sub division office, Afzalpur, Gulbarga District.

6. File was referred to TAC for investigation. Investigation has been conducted by Assistant Executive Engineer II, TAC, Lokayukta (I.O. for short). The report of the I.O. is that the work has commenced on 23.12.2008 and main work has been completed in September 2009 and the work was completed in all respects on 30.10.2011, where as the work had to be completed in 10 months and contractor is partly responsible for the delay as the contractor had to take possession of the land required from the land owners by having conciliation with them and by sorting out the acquisition problems, if any.

7. After receiving the report of the I.O., the names of the concerned engineers who had worked during the relevant period has been ascertained and they have been impleaded viz., Sri. Jagannath Halangi, the then Executive Engineer, MI Division, Gulbarga presently working as S.E., IPC Circle, Gulbarga, Sri. Kalagi Shivaputra, Executive Engineer, M.I. Division, Gulbarga District, Sri. Jayanandam T. Executive Engineer, MI Division Gulbarga presently working at Bidar, Sri. Kuganoor, S.S. Assistant Executive Engineer, MI Division Gulbarga District presently working as Assistant Executive Engineer, Zilla Panchayath, Indi, Bijapur District and Sri. Ashok Ambalgi, Asst. Executive Engineer, M.I. Division, Afzalpur and copy of the report of I.O. was sent to them for their reply and DGOs 1 to 3 have submitted their replies and DGO 4 has not submitted the reply though he has received our letter on 9.1.2014.

8. DGOs 1 to 3 have not denied that there is delay in executing the work. Though the work had to be completed within 10 months from the date of tender contract agreement with the contractor i.e., 8.7.2008, the work has been completed in all respect in 2011. Even if major portion of the work is completed in September 2009 there is delay of 4 months in completing the major portion of work.

9. In view of the facts stated above and the material on record, replies of the DGOs 1 to 3 have not been found satisfactory to drop the proceedings. The facts supported by the material on record show that the DGOs, being Government servants, have failed to maintain absolute integrity, devotion to duty and also acted in a manner unbecoming of Government servants and thereby committed misconduct and made themselves liable for disciplinary action.

10. Since the said facts and material on record prima-facie show that the DGOs have repeatedly committed misconduct as per Rule 3(1) of the KCS (Conduct) Rules, 1966, a report u/s 12(3) of Karnataka Lokayukta Act, was sent to the Competent Authority with a recommendation to initiate disciplinary proceedings Under Rule 14-A of Karnataka Civil Services (Classification, Control and Appeals) Rules 1957. In turn Competent Authority initiated disciplinary proceedings against DGOs and entrusted the enquiry to this Institution and Hon'ble Upalokayukta nominated this enquiry Authority to conduct enquiry and report. Hence, this charge.

11. The said article of charge was served on the DGOs on 30.12.2016, 2.1.2017, 3.1.2017 and 4.1.2017. DGOs 1 to 4 appeared before the enquiry officer and their first oral statement under Rule 11(9) was recorded. DGOs have denied the said charges.

12. DGOs 1 to 4 have filed their written statement denying all the allegations. DGOs 1, 2 and 3 in their written statement have submitted that :-

(i) The barrage across Bennithora River near Kandanager village has been constructed within the time extension granted as per the terms of the conditions of contract and as such the purpose of constructing the barrage has served the benefit of the beneficiaries for which the project was taken up.

(ii) That the work executed is as per the specifications stipulated for each of the items of the work mentioned in the bill of quantities (BoQ) attached to the agreement along with the conditions of contract. There is no substandard work allowed by the DGOs 1 to 3 as such no public money has been misappropriated by the Assistant Executive

Engineer, Minor Irrigation Department, Sub Division Officer, Afzalpur, Gulbarga District.

- (iii) That the report of the I.O. is partially correct to the extent that the work has commenced on 23.12.2008 and main work has been completed in September 2009 and the work was completed in all respects on 30.10.2011. The inferences placed that the work had to be completed in 10 months and contractor is partly responsible for the delay as the contractor had to take possession of the land required from the land owners by having conciliation with them and by sorting out the acquisition problems, if any, is a misunderstanding of the I.O., as the conditions of the contract has not been understood by the IO in its totality. A partial reading and understanding has been made and wrong inferences have been drawn leading to imputation on the DGOs 1 to 3. Specific acts attributable to each of the DGOs has not been placed by the IO to establish the imputations made in the report but general statements and phrases has been placed by the IO in his report as such the charges made against them are vague.
- iv. They admit that DGOs 1 to 3 have not denied that there is delay in executing the work. Though the work had to be completed within 10 months from the date of tender contract agreement with the contractor i.e., 8.7.2008 the work has been completed in all respect in 2011, but it was completed as per the terms of the conditions of contract and the approvals of the Competent Authorities. The imputation that even if major portions of the work is completed in September 2009 there is delay of 4 months in completing the major portion of work could be accepted for reasons cited above.

DGOs 1 to 3 further submit that they have carried out the work as per the approval and sanctions of the Competent Authority and also in adherence to the rules and guidelines issued under the Government. They have not acted in violation of any rules, conditions or guidelines that are applicable to the impugned work.

13. DGO 4 has filed his written statement denying all the allegations. He further submits that he was working as Assistant Executive Engineer, Minor Irrigation Sub Division, Afzalpur MI Sub-division, Gulbarga District during the period from 10.12.2009 to 30.5.2012 and it is quite evident that he has assumed the charge of the post of the Assistant Executive Engineer, MI Sub Division, Afzalpur after completion of major portion of the above said work. Hence, he is falsely implicated in the present case. When he has not worked at all in the above said office at the time of execution of the major portion of the above said work, the allegations leveled against him in the complaint and in the charge are not maintainable. DGO further submits that before his reporting to duty in the MI Sub-division Afzalpur, major portion i.e., 90% of the work was completed during September 2009 and other miscellaneous items of works such as providing and fixing of gates, construction of godown and stone pitching on either side of the bank of river were held up due to agitation and non-cooperation by the peasants/land owners. The records reveal that the land acquisition proposal for the above work was submitted to the Deputy Commissioner, Gulbarga on 11.1.2008, much before the commencement of the work i.e., 23.12.2008. The cost of land acquisition amounting to Rs. 94,000/- was deposited in advance on 24.6.2008. Again the fresh proposal was sent on 24.9.2010 and the Spl. Land Acquisition Officer, Minor and Medium

Irrigation Projects, Gulbarga after following due procedure of issuing preliminary notification, joint measurement survey, final notification and notification for payment of compensation, then the compensation amount was paid to the beneficiaries. Therefore, the delay is due to agitation and non-cooperation of the land owners and he cannot be held responsible for the same. However, though the departmental officers were not responsible for the delay in completing the balance 10% of miscellaneous items of work, penalty clause was invoked and penalty of Rs. 90,000/- was recovered from the contractor for the delay period. And there is no escalation of rates or tender amount due to this delay and no extra expenditure incurred to the Government exchequer. Further DGO submits that the I.O. had conducted the spot inspection of the work on 13.1.2013 in presence of complainant and also other officers of the Department. The complainant has also signed in the panchanama drawn on this day, wherein it is stated that he has satisfied that the work has been completed in all respect benefitting the peasants and he has agreed with the report of the Engineer about the quality of the work. The I.O. in his report has clearly observed that the work has been completed in all respects and the allegations leveled by the complainant are not substantiated. 90% of works were completed within the stipulated time, thereby not affecting irrigation of land and the delay in completion of balance 10% miscellaneous items of work was due to agitation and non-cooperation of the land owners, but still penalty of Rs. 90,000/- was recovered from the agency. Hence, there is no loss to the Government. Government has ratified the completion cost of the project. Hence, the I.O. has conclusively stated in his report that the work has been executed in all respects without any lapses and also exonerated the DGOs from the allegations. Further DGO 4

submits that he has worked as Assistant Executive Engineer, MI Sub division Afzalpur only during the period from 10.12.2009 to 30.5.2012. During this period, he has submitted his replies/explanations to all the letters/endorsements received from this Hon'ble authority. Since he was transferred and posted to Jala Samvardhane Yojana Sangha, Raichur and had handed over the charge of the post of A.E.E., MI sub division, Afzalpur on 30.5.2012. The letter dt. 9.1.2014 said to have been sent by this Authority was not received by him. Hence, the reply was not submitted. He has not committed any misconduct. Hence prays to exonerate from the charges.

14. On behalf of the Disciplinary Authority, two witnesses are examined as PWs 1 and 2, Ex P 1 to P 8 are marked. After the closure of the evidence of the Disciplinary Authority, second oral statement of DGOs u/R 11(16) was recorded. DGOs submitted that they have defence evidence. DGOs 1 to 4 got examined themselves as DWs 1 to 4 along with another witness DW 5 on their behalf and got marked Ex D 1 to D 26. Therefore, recording answers to questionnaire u/R 11(18) of KCS (CCA) Rules was dispensed with. Then the learned presenting officer and learned defence assistant for DGOs filed their written brief and they were also heard orally.

15. The points for my consideration are as under :

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

Point No. 2 : What order?

16. My answers to the above points are as follows:

Point No. 1 : In the affirmative.

Point no. 2 : As per final order

for the following ;

REASONS

17. **Point no. 1** : The complainant who is examined as PW1 has deposed that in Aland Taluk, Kamalanagar village, construction of barrage work was taken up during the year 2008-09. According to the estimate, the work was not completed within the prescribed period. The money also was misappropriated. Therefore, he lodged the complaint during August 2010 in form no.1 and 2 as per Ex P 1 and 2. Further PW1 has deposed that the Assistant Executive Engineer, Minor Irrigation has supervised the work. After lodging the complaint Lokayukta officials visited the spot, but he was not present at that time.
18. In the cross examination made by DGOs 1 to 3, PW1 has deposed that earlier he was working as a bank employee. He does not know the DGO. When he was working in the bank, there were no allegations against him. After the retirement, he came out. When he lodged the complaint the work was not completed. Except the Government Order (Ex.P.3) and the general abstract (Ex P 4), he has not produced any other documents. He has not received any communications from Lokayukta office about carrying out spot inspection on a particular day and his presence was required.
19. Further PW1 has deposed that he does not know when exactly the farmers have drawn the water from barrage. Since the plates were not fixed, he has lodged the complaint. Shed for preserving the plates

was not constructed. He does not know that farmers have given their statements for having drawn the water for agriculture during the year 2009-2010 itself. He has lodged the complaint only against Assistant Executive Engineer. He has not produced any documents to prove and also had given the representation to Executive Engineer, Superintending Engineer and Chief Engineer.

20. Further PW1 has deposed that he does not know exactly when the work was commenced. When he lodged the complaint on 10.8.2010, water was impounded in the barrage. He denies that under misconception, he has lodged the complaint.

21. In the cross examination made by DGO 4, PW1 has deposed that the document shown to him (Ex.D1) bears his signature. After reading the contents, he has signed Ex D1. Accepting the contents of the correctness of the document, he has put his signature. He does not know DGO No.4. He has not filed any detailed complaint.

22. The I.O. who got examined himself as PW2 has deposed that he received the investigation of this case on 13.12.2012 from his Chief Engineer. On 17.12.2012, he wrote a letter to Executive Engineer of Minor Irrigation Department, Gulbarga to furnish the documents. On 28.1.2013, the said Executive Engineer has given a report along with documents. After verification of records, he issued notice to the concerned engineers and complainant to be present for spot inspection on 10.12.2013. Accordingly on 10.12.2013, he visited Kamalanagar, Aland taluk, inspected the barrage work along with Sri. Mandigeri - Assistant Executive Engineer, Sri. Ajagonda,

Assistant Engineer, complainant and local peoples. He found no discrepancy in this work.

23. Further PW 2 has deposed that the work was commenced on 23.12.2008 and completed on 31.10.2011 in all respects. According to the agreement, the scheduled date of completion was 7.5.2009. Within the stipulated period, complete work was not done. Accordingly, he has submitted his report Ex P 7 and clarifications in the note sheet itself. At the time of spot inspection, he has also drawn the mahazar and taken the photographs.

24. In the cross examination made by DGOs 1 to 3, PW 2 denies that from 23.12.2008 to 7.5.2009, major work was completed. The actual work was completed on 31.10.2011. He denies that within the stipulated time, the major work was completed. Major work has been completed within September 2009. He admits that according to his report, the major components of works (90%) of works was completed within the tender stipulated period. The tender amount is Rs 1.29 crores, total expenditure is Rs. 1.23 crores. As on stipulated time, Rs. 12.5 lakhs worth of works were executed beyond the stipulated period.

25. Further PW 2 has deposed that after the stipulated period, the work of godown and road only was pending. Non execution of godown work and road work have no impact on the purpose of the functioning of the project. He admits that without a godown and road, the barrage can function. He admits that these 2 works have no impact on the working of barrage.

26. Further PW2 admits that there is a provision for extension of time if there is any delay. He admits that if the extension of time is given, payment can be made. The Chief Engineer has given permission for extension of time and the same has been accepted and approved by the Government. He admits that the document shown to him (Ex D 2) is the revised estimate cost approved by the Government. He admits that there is a provision for modifications and variations of items of work with or without time extension. He admits that in this case, penalty was imposed on the Contractor and time was extended.

27. Further PW2 admits that DGOs have power to recommend for extension of time within 3 months for the delay caused by the contractor to the Competent Authorities for approval. He admits that only after the approval for extension of time, bill was prepared along with the revised estimate and submitted for sanction and payment. As per the Executive Engineer's report, the delay for execution of the work was because of delay in land acquisition. The land acquisition was within the powers of the D.C. He admits that DGOs had deposited the entire cost of the land with the DC before the commencement of the work. Except this, there was no other reasons for delay.

28. In the cross examination made by DGO 4, PW 2 admits that according to the terms and conditions of the agreement, it was the responsibility of the contractor to obtain the lands convincing the land owners and to complete the work within the stipulated time, pending payment of compensation. He admits that as the contractor has failed in his duties, penalty of Rs. 90,000/- was imposed on him.

He admits that the said Rs. 90,000/- is recovered from the contractor.

29. Further PW2 has deposed that he has not secured the incumbency of DGO 4. He cannot say that DGO 4 has worked as Assistant Executive Engineer from 10.2.2009 to 30.5.2012. He admits that there was an agitation by the land owners regarding handing over the land. He admits that as per the report of the Executive Engineer, land acquisition proceedings was the reason for delay in execution of the work. He admits that during his investigation, he did not find any reason to disagree with the report of Executive Engineer. He admits that there was no escalation of cost.

30. The DGO 1 who got examined himself as DW1 has deposed that from 24.9.2007 to 22.6.2011 and 15.7.2013 to 12.6.2015, he was working as Executive Engineer in Minor Irrigation Division, Kalburgi. During his tenure, construction of barrage work across Bennithora river near Kamalanagar village in Aland Taluka was executed. The work was commenced on 08.07.2008 and major portion was completed on 7.5.2009. On tender basis the work was entrusted to Sri. S.R.Patil, Contractor under an agreement vide order dtd. 30.6.2008. As per above, order agreement was signed on 8.7.2008.

31. Further DW1 has deposed that within stipulated period, 90% of the barrage and allied work was completed. The proposal for land acquisition was initiated by Assistant Executive Engineer on 11.01.2008 and forwarded to him. As per the directions of LAO, they have deposited a sum of Rs.94,000/- on 27.6.2008. Since no action was taken by SLAO, 2nd time proposal was sent on 24.9.2010. The

Deputy Commissioner issued directions to LAO to follow Section 4(1) of Land Acquisition Act. Section 4(1) notification was issued on 19.1.2011 and 6(1) notification was issued on 9.7.2012. Possession of land was handed over to them on 4.8.2014.

32. Further DW1 has deposed that due to the delay in land acquisition, finalization was delayed, but major portion of the barrage work was completed within stipulated time. As per the terms of contract, penalty of Rs.100/- per day for 907 days was imposed on the contractor and it was approved by the Chief Engineer. As per the instructions of the higher authority, revised estimate was prepared and approved on 3.9.2013. The work was entrusted to the contractor at the cost of Rs.1,21,91,761/- as against the earlier agreement for Rs.1,29,03,455/-. Accordingly, the work was completed within the stipulated period.

33. Further DW1 has deposed that the delay of 907 days including 4 months was ratified by the Chief Engineer on the basis of government order. 2nd and part bill was prepared after completion of 90% of the project work. The 3rd and part bill was prepared after completion of allied work. The penalty of Rs.90,700/- was recovered by the contractor in 8th and pre final bill. Time extension is approved by competent authority. Therefore within stipulated time, they have completed the work. Hence, prays to exonerate from the charges.

34. The DGO 2 who got himself examined as DW2 has deposed that from 22.6.2011 to 15.7.2013, he was working as Executive Engineer, M.I. Division, Kalburgi. He took the charge as Executive Engineer on 22.6.2011, the work was commenced on 8.7.2008 and completed on

7.5.2009. Further DW2 has deposed that the supplementary agreement was executed on 2.10.2013. During his period, barrage work was not at all executed, but it was already completed. During his period, none of the barrage work was executed. He has never prepared any bills, he has never recorded the measurements at any point of time. Hence, prays to exonerate from charges.

35. DGO 3 who got examined himself as DW3 has deposed that from 15.5.2007 to 29.9.2009 he was working as Assistant Executive Engineer in M.I. Sub-division, Afzalpur. During his tenure, a proposal was sent to the Executive Engineer, Kalburgi for land acquisition. During his tenure, he has prepared part and partial bill. During his period, barrage work was completed and water was stored in the barrage. During his period, he prepared 4th and part bill and submitted the same to Executive Engineer. No payment was made for main barrage work in 4th and part bill.

36. Further DW3 has deposed that the work was commenced on 08.07.2008 and major portion was completed on 7.5.2009 on tender basis the work was entrusted to Sri. S.R.Patil, Contractor under an agreement vide order dtd. 30.6.2008. The said approval order of Chief Engineer is at Ex.D.4. As per above order, agreement was signed on 8.7.2008.

37. Further DW3 has deposed that within stipulated period 90% of the barrage work and allied work was completed. As per the directions of LAO, Executive Engineer has deposited a sum of Rs. 94,000/- on 27.6.2008. Since no action was taken by SLAO, 2nd time proposal was sent on 24.9.2010. The Deputy Commissioner issued

directions to LAO to follow Section 4(1) of Land Acquisition Act. Section 4(1) notification was issued on 19.1.2011 and 6(1) notification was issued on 9.7.2012.

38. Further DW3 has deposed that the delay of 907 days including 4 months was ratified by the Chief Engineer on the basis of government order. 2nd and part bill was prepared after completion of 90% of the project work. The 3rd and part bill is prepared after completion of allied work. Hence, prays to exonerate from the charges.

39. DGO 4 who got examined himself as DW4 has deposed that from 10.12.2009 to 30.5.2012, he was working as Assistant Executive Engineer in M.I. Sub-division, Afzalpur. Before he took the charge as Assistant Executive Engineer in M.I. Sub-division Afzalpur the main barrage work was completed. On 20.9.2010 during his tenure, a proposal was submitted to division office for land acquisition as referred in Ex.D.9. During his tenure construction of godown work was completed, balance revetment work was completed. Since the land acquisition proceeding was not completed, there was delay in completion of allied works.

40. Further DW4 has deposed that after he was transferred from Afzalpur his successors prepared 2nd proposal, revised estimates sent for approval and have done the further proceedings. During his period, no work was delayed. He has not committed any misconduct. Hence, prays to exonerate from the charges.

41. In the cross examination DWs 1 to 4 admit that at the time of executing Bennithora river barrage work, they were working in

Afzalpur and Kalburgi. They admits that according to the agreement the work had to be completed within 10 months. They do not know that the work was not completed within 10 months. They deny that the work was not executed within stipulated period of time. They deny that the land acquisition proceedings were already completed.

42. Further DWs 1 to 4 admit that the godown work, revetment work and barrage work are included in the same agreement. They deny that since they have not properly supervised the work, there is delay in completion of work. They deny that the oral and documentary evidence given by them is no way related to the articles of charge and to escape from liability, they are deposing falsely.

43. DW5 has deposed that from 11.08.2016, he was working as Executive Engineer in Minor irrigation Division, Kalburgi. Barrage across Bennethora river near Kamalanagar, Alanda Taluk, Kalburgi District is coming under his jurisdiction. He has seen Barrage work. The Barrage is in good condition and working satisfactorily. During his tenure, no maintenance work was taken up to this Barrage. The Chief Engineer has the power to extend the time if there is any delay. Accordingly the Chief Engineer has extended the time as per Ex D-16. Ex D-3 & 23 are the incumbency certificates issued by him on the basis of office records. The Barrage is functioning for the purpose for which it was constructed.

44. In the cross examination, DW5 admits that in his tenure, this Barrage work was not executed. According to the agreement the work was to be commenced on 08.7.2008 and was to be completed on 7.10.2009. According to the records, the work was commenced on

23.12.2008 and completed on 31.10.2011. He admits that the work was not completed within 10 months excluding Monsoon as per agreement. He has not extended the time. He denies that without knowing the true facts to help DGOs, he is deposing falsely.

45. DGOs have taken the contention that within the stipulated period, 90% of the work was completed and 10% of miscellaneous items of works was due to agitation and non-operation of the land owners. But the DGO have not produced any material evidence on record to show that the land owners refused to give the acquired land. If there was no mistake on the part of the DGOs, there was no necessity for them to recover the penalty of Rs. 90,000/- from the contractors. According to the DGOs, the godown and road work were pending. For smooth functioning barrage and godown and road are very much necessary. During this delay period, the farmers have suffered inconvenience. Therefore the contention of the DGOs that they have not committed any misconduct cannot be accepted.

46. The oral and documentary evidence on record clearly reveals that the DGOs 1 to 4 caused delay in executing barrage work across Bennithora river near Kamalanagar village, though the work had to be completed within 10 months from the date of tender contract agreement with the contractor i.e., 8.7.2008, the work has been completed in all respect in the year 2011. Even if the major portion of the work is completed in September 2009, there is delay of 4 months in completing the major portion of work.

Thereby the DGOs, being Government /public servants have failed to maintain absolute integrity besides devotion to duty and

acted in a manner unbecoming of the Government servants. Hence, I proceed to answer point No. 1 in the affirmative.

47. **Point No. 2** : For the reasons discussed above, I proceed to pass the following ;

ORDER

Disciplinary Authority has proved the charges as framed against the following DGOs :-

1. Sri. Kalagi Shivputra, Executive Engineer, Minor Irrigation Division, Kalburgi.
2. Sri. T. Jayanandam, (**Now Retired**) Executive Engineer, Minor Irrigation Division, Kalburgi
3. Sri. S S Kuganoor, Assistant Executive Engineer, Minor Irrigation Division, Kalburgi (presently working at Zilla Panchayath, Indi Taluk, Vijayapura District)
4. Sri. Ashok Ambalgi, Assistant Executive Engineer, Minor Irrigation Division, Afzalpur (presently working at Zilla Panchayath, Alanda, Kalburgi District)

Hence, this report is submitted to Hon'ble Upalokayukta I for kind consideration.

Dated this the 27th January, 2018

Sd/-

(S. Gopalappa)
Additional Registrar Enquiries-10
Karnataka Lokayukta
Bangalore

ANNEXURES**LIST OF WITNESSES EXAMINED ON BEHALF OF DISCIPLINARY AUTHORITY:**

PW-1 :- Sri. Mallikarjun
 PW-2 :- Sri. M. Deviprasad

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENCE:

DW-1:- Sri. Kalagi Shivaputra
 DW-2:- Sri. T. Jayanandam
 DW-3:- Sri. Siddaram N. Kuganoor
 DW-4:- Sri. Ashok Ambalagi
 DW-5:- Sri. H.B. Mallappa

LIST OF EXHIBITS MARKED ON BEHALF OF DISCIPLINARY AUTHORITY

Ex.P-1 : Form No. I
 Ex.P-2 : Form No.II
 Ex.P-3 : Government order dt. 3.8.2007 of Water Resources Department (Minor Irrigation).
 Ex.P-4 : General Abstract
 Ex P-5 : Mahazar dt. 10.12.2013
 Ex.P-6 : CD
 Ex P 7 : Report of Assistant Executive Engineer-2, TAC, KLA, Bangalore dt. 21.7.2017
 Ex P 8 : Report of Executive Engineer, M.I. Division, Gulbarga dt. 23.6.2014

LIST OF EXHIBITS MARKED ON BEHALF OF DGO:

Ex.D-1 : Mahazar
 Ex.D-2 : Government order dt. 3.9.2013 of Water Resources Department (Minor Irrigation).
 Ex.D-3 : Incumbency certificate
 Ex.D-4 : Approval Order of Chief Engineer, Minor Irrigation, Vijapur dt. 30th June 2008
 Ex.D-5 : Docket Sheet
 Ex.D-6 : Letter dt. 11.1.2008 of Executive Engineer, Minor Irrigation Division, Gulbarga
 Ex.D-7 : Letter dt. 27.6.2008 of Executive Engineer, Minor Irrigation Division, Gulbarga.
 Ex.D-8 : Cheque extract
 Ex.D-9 : Letter dt. 24.9.2010 of Executive Engineer, Minor

- Irrigation Division, Gulbarga
- Ex.D-10 : Notification dt. 19.9.2011 of Spl. LAO, Minor Irrigation Project, Gulbarga
- Ex.D-11 : Notification dt. 14.6.2012 of Under Secretary to Government, Revenue Department.
- Ex.D-12 to : Award Notices dt. 9.7.2013
- Ex D-14
- Ex.D-15 : Gazette Notification dt. 4.8.2014
- Ex.D-16 : Penalty order
- Ex.D-17 : Letter dt. 30.11.2013 of Chief Engineer, Minor Irrigation, Vijapura.
- Ex.D-18 : Government Order dt. 3.9.2013 of Under Secretary to Government, Water Resources Department (Minor Irrigation)
- Ex.D-19 : Agreement dt. 1.10.2013
- Ex.D-20 & : 2nd, 3rd and part bills
- Ex D-21
- Ex.D-22 : Bill
- Ex.D-23 : Incumbency certificate
- Ex.D-24 : Incumbency certificate issued by Assistant Executive Engineer, Minor Irrigation and Internet Development Sub Division, Afzalpur dt. 18.8.2017
- Ex.D-25 : Letter dt. 9.1.2008 of A.E.E., Minor Irrigation Sub Division, Afzalpur
- Ex.D-26 : Bill

Dated this the 27th January 2018

Sd/-

(S. Gopalappa)
Additional Registrar Enquiries-10
Karnataka Lokayukta
Bangalore

GOVERNMENT OF KARNATAKA



KARNATAKA LOKAYUKTA

NO:UPLOK-1/DE/376/2016/ ARE-10

Multi Storied Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru-560 001,
Date: 05/02/2018

RECOMMENDATION

Sub:- Departmental inquiry against;

- (1) Sri Kalagi Shivaputra, Executive Engineer, Minor Irrigation Division, Kalaburagi;
- (2) Sri T.Jayanandam, Executive Engineer, Irrigation Division, Kalaburagi (now retired)
- (3) Sri S.S.Kuganoor, Assistant Executive Engineer, Minor Irrigation Division, Kalaburagi (Presently working at Zilla Panchayath, Indi Taluk, Vijayapura District) and
- (4) Sri Ashok Ambalgi, Assistant Executive Engineer, Minor Irrigation Division, Afazalpur (Presently working at Zilla Panchayath, Alanda, Kalaburagi District) – Reg.

- Ref:- 1) Government Order No.ಸನೇಇ 49 ಸೇಇವಿ 2016, Bengaluru dated 8/9/2016
- 2) Nomination order No.UPLOK-1/DE/376/2016, Bengaluru dated 16/9/2016 of Upalokayukta-1, State of Karnataka, Bengaluru
 - 3) Inquiry Report dated 27/1/2018 of Additional Registrar of Enquiries-10, Karnataka Lokayukta, Bengaluru

The Government by its Order dated 8/9/2016, initiated the disciplinary proceedings against (1) Sri Kalagi Shivaputra, Executive Engineer, Minor Irrigation Division, Kalaburagi; (2) Sri T. Jayanandam, Executive Engineer, Minor Irrigation Division, Kalaburagi (now retired); (3) Sri S.S. Kuganoor, Assistant Executive

Engineer, Minor Irrigation Division, Kalaburagi (Presently working at Zilla Panchayath, Indi Taluk Vijayapura District) and (4) Sri Ashok Ambalgi, Assistant Executive Engineer, Minor Irrigation Division, Afzalpur (Presently working at Zilla Panchayath, Alanda, Kalaburagi District) (hereinafter referred to as Delinquent Government Officials 1 to 4, for short as '**DGO-1, DGO-2, DGO-3 and DGO-4 respectively**') and entrusted the Departmental Inquiry to this Institution.

2. This Institution by Nomination Order No.UPLOK-1/DE/376/2016, Bengaluru dated 16/9/2016, nominated Additional Registrar of Enquiries-10, Karnataka Lokayukta, Bengaluru, as Inquiry Officer to frame charges and to conduct Departmental Inquiry against DGOs 1 to 4 for the alleged charge of misconduct, said to have been committed by them.

3. The DGO-1 Sri Kalagi Shivaputra, Executive Engineer, Minor Irrigation Division, Kalaburagi; DGO-2 Sri T. Jayanandam, Executive Engineer, Minor Irrigation Division, Kalaburagi (now retired); DGO-3 Sri S.S. Kuganoor, Assistant Executive Engineer, Minor Irrigation Division, Kalaburagi (Presently DGO-4 Sri Ashok Ambalgi, Assistant Executive Engineer, Minor Irrigation Division, Afzalpur (Presently working at Zilla Panchayath, Alanda, Kalaburagi District) were tried for the following charge:-

"That, you DGO-1, Kalagi Shivputra, Executive Engineer, Minor Irrigation Division, Kalburgi, you DGO-2 Sri T. Jayanandam, Executive Engineer, Minor Irrigation Division, Kalburgi (Presently Minor Irrigation Division, Bidar), you DGO 3 - Sri S.S. Kuganoor, Assistant Executive Engineer, Minor Irrigation

Division, Kalburgi (presently working at Zilla Panchayath, Indi Taluk, Vijayapura District) and you DGO 4 - Sri Ashok Ambalgi, Assistant Executive Engineer, Minor Irrigation Division, Afzalpur (presently working at Zilla Panchayath, Alanda, Kalburgi District) caused delay in executing barrage work across Bennithora river near Kamalanagar Village, though the work had to be completed within 10 months from the date of Tender Contract Agreement with the Contractor i.e., 8/7/2008, the work has been completed in all respect in the year 2011. Even if the major portion of the work is completed in September 2009, there is delay of 4 months in completing the major portion of work. Thus you DGOs 1 to 4, being Government/ Public Servants have failed to maintain absolute integrity besides devotion to duty and acted in a manner unbecoming of Government Servants and thus committed misconduct as enumerated U/R 3(1) of Karnataka Civil Services (Conduct) Rules, 1966."

4. The Inquiry Officer (Additional Registrar of Enquiries-10) on proper appreciation of oral and documentary evidence has held that the Disciplinary Authority has proved the above charge against DGO-1 Sri Kalagi Shivaputra, Executive Engineer, Minor Irrigation Division, Kalaburagi; DGO-2 Sri T. Jayanandam, Executive Engineer, Minor Irrigation Division, Kalaburagi (now retired); DGO-3 Sri S.S. Kuganoor, Assistant Executive Engineer, Minor Irrigation Division, Kalaburagi (Presently working at Zilla Panchayath, Indi Taluk Vijayapura District) and DGO-4 Sri Ashok Ambalgi, Assistant Executive Engineer, Minor Irrigation Division, Afzalpur (Presently working at Zilla Panchayath, Alanda, Kalaburagi District).

5. On re-consideration of report of inquiry, I do not find any reason to interfere with the findings recorded by the Inquiry Officer. It is hereby recommended to the Government to accept the report of Inquiry Officer.

6. As per the First Oral Statement submitted by DGOs 1 to 4;
- (i) DGO-1 Sri Kalagi Shivaputra is due to retire from service on 31/10/2020;
 - (ii) DGO-2 Sri T. Jayanandam has retired from service on 30/4/2017 (during the pendency of inquiry);
 - (iii) DGO-3 Sri S.S. Kuganoor is due to retire from service on 31/12/2018; and
 - (iv) DGO-4 Sri Ashok Ambalgi is due to retire from service on 31/5/2022

7. Having regard to the nature of charge proved against DGO-1 Sri Kalagi Shivaputra, DGO-2 Sri T. Jayanandam, DGO-3 Sri S.S. Kuganoor, and DGO-4 Sri Ashok Ambalgi;

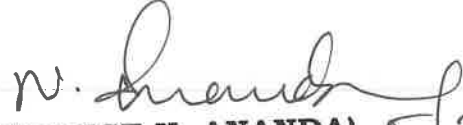
- (i) it is hereby recommended to the Government to impose penalty of reducing the pay in the time scale of pay by two lower stages with cumulative effect on DGO-1 Sri Kalagi Shivaputra, Executive Engineer, Minor Irrigation Division, Kalaburagi;
- (ii) it hereby recommended to the Government to impose penalty of withholding 10% of pension payable to Sri T. Jayanandam, the then Executive Engineer, Minor Irrigation Division, Kalaburagi (Retired on 30/4/2017), for a period of 5 years;
- (iii) it is hereby recommended to the Government to impose penalty of reducing the pay in the time scale

of pay by two lower stages with cumulative effect on DGO-3 Sri S.S. Kuganoor, Assistant Executive Engineer, Minor Irrigation Division, Kalaburagi (Presently working at Zilla Panchayath, Indi Taluk Vijayapura District) and

(iv) it is hereby recommended to the Government to impose penalty of withholding two annual increments with cumulative effect on DGO-4 Sri Ashok Ambalgi, Assistant Executive Engineer, Minor Irrigation Division, Afzalpur (Presently working at Zilla Panchayath, Alanda, Kalaburagi District).

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

Connected records are enclosed herewith.


(JUSTICE N. ANANDA) 5/2
Upalokayukta-1,
State of Karnataka,
Bengaluru

