

**KARNATAKA LOKAYUKTA**

NO:UPLOK-1/DE-451/2015/ARE-9

M.S.Building,  
Dr. B.R. Ambedkar Veedhi,  
Bengaluru - 560 001.  
Date: 30-12-2017**:: ENQUIRY REPORT ::****:: Present ::****( Lokappa N.R )**Additional Registrar of Enquiries-9  
Karnataka Lokayukta,  
Bangalore

Sub: Departmental Enquiry against 1)Dr. Abhay Kumar – Health Officer and 2)Sri. Thippesh-the then Commissioner, Kalaburgi Mahanagara Palike, Kalaburgi – reg.

Ref: 1) Government Order No. ನ೨ಇ 35 ಎಸಿಜಿ 2015, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 25/08/2015.

2) Nomination Order No: UPLOK-1/DE/451/2015, Bangalore dated 11/09/2015.

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This Departmental Enquiry is initiated against 1)Dr. Abhay Kumar – Health Officer and 2)Sri. Thippesh-the then Commissioner, Kalaburgi Mahanagara Palike, Kalaburgi (hereinafter referred to as the “Delinquent Government Officials” in short “**DGO 1 and 2**”).

2) In view of the Government Order cited above at reference No.1 and Hon’ble Upalokayukta-I vide order dated 11/09/2015 cited at reference No.2 has Nominated Addl.Registrar of



Enquiries-6 to frame the charges and to conduct the enquiry against the aforesaid DGOs 1 and 2. Addl. Registrar of Enquiries-6 has prepared Articles of charges, statement of imputation of misconduct, list of witnesses proposed to be examined in support of the charges and list of documents proposed to be relied on in support of the charges. The copies of the same were issued to DGOs calling upon them to appear before the Enquiry Officer and to submit their written statement of defense.

Later vide Order No. Uplok-1/DE/2016 Bangalore, dated: 3.8.2016 of Hon'ble Upalokayukta-1 this file has been transferred to ARE-9.

The Article of charges framed by the ARE-6 against the DGOs 1 and 2 is as under :

### **ANNEXURE-I**

#### **CHARGE**

2. That you, Dr. Abhay Kumar while working as Health Officer (hereinafter referred to as Delinquent Government Servant, DGO No.1 for short) and you Sri. Thippesh while working as Commissioner (referred to as DGO No.2) in City Corporation Gulbarga during the period from July 2006 to Oct 2006 had purchased 20 fogging machines at the rate of Rs.19,000/- each from M/s. Chetan Enterprises, Gulbarga and 20 fogging machines at the rate of Rs.22,700/- each from Shree Lakshmi Traders Jevargi by calling tender

or

without mentioning the capacity of fogging machines and the said 40 fogging machines were of lesser capacity and thereby you – DGO No.1 and 2 being government servants have failed to maintain absolute integrity besides absolute devotion duty and acted in a manner unbecoming of government servants and committed misconduct as provided under Rule 3(1)(i) to (ii)(iii) of KCS (Conduct) Rules 1966 and there by committed grave misconduct.

### **ANNEXURE-II**

#### **STATEMENT OF IMPUTATION OF MISCONDUCT:**

The complainant Sri. Shaikh Shafi Ahmed – Convener of City Scientific Development Action Committee – H.No. 5-189/1 in Noor Bagh Roza (B) at Gulbarga had filed a complaint against Dr. Abhay Kumar – Health Officer of City Corporation at Gulbarga alleging that he has purchased fogging machines without following the rules and without tender, investigation was taken up after invoking section 9 of the Karnataka Lokayukta, Act 1984.

2. The Chief Engineer of Technical Audit Cell in our institution at Bangalore (hereinafter referred as I.O for short) was entrusted to investigate and report. On that he submitted report dated 8/9/2011 with enclosures.

3. The report of I.O, is that, during July 2006, fogging machines have been purchased @ Rs.19,500/- each and at the rate of Rs.22,700/- each during October 2006 by calling short term tender, and the difference of rate paid during July

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2006 and October 2006 for the fogging machines cannot be compared since the specification of the capacity of the machines purchased cannot be compared since the specification of the capacity of the machines purchased during July 2006 and October 2006 is not indicated and the capacity of fogging machines appears to be of less capacity. Chief Engineer has concurred with the opinion and he stated that DGO No.1 and Sri. Thippesh- the then Commissioner of City Corporation at Gulbarga (hereinafter referred to as DGO No.2) are responsible for purchase of 40 fogging machines by inviting the tender, without mentioning the capacity of fogging machines.

4. Reply of DGO 1 and 2 were called for on the I.O report and they have submitted reply denying the allegations but are not convincing to accept and drop the proceedings against them.

5. A careful consideration of the material including the report of I.O and facts besides record available prima-facie showed that the DGO No.1 and 2 have failed to maintain absolute integrity besides absolute devotion to duty and acted in a manner unbecoming of Public/Government servants and thereby attracting Rule 3(1)(i), (ii) & (iii) of the KCS (Conduct) Rules, 1966 and thereby committed misconduct and as such answerable and liable for disciplinary proceedings against them.

6. Therefore, acting under Section 12(3) of the Karnataka Lokayukta Act, recommendation was made to the Competent Authority to initiate disciplinary proceedings against the DGO No.1 and 2 also to entrust that inquiry to this Authority

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under Rule 14-A of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. Hence, the charge.

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The DGO 1 and 2 have appeared on 20/01/2016 before enquiry authority in pursuance to the service of Article of Charges.

Plea of DGO 1 and 2 have been recorded. They have not pleaded guilty and claimed for holding enquiry.

**The DGOs have filed their written statement and submit that,** complaint filed against the DGOs was absolutely false, frivolous and not maintainable in law or on facts and is liable to be dismissed in limine. The complaint has been filed against the DGOs with an ulterior motive to harass the DGOs. At the very outset it is submitted that the complaint and the investigation report does not disclose any tenable cause of action against the DGOs.

Further submitted that complainant had approached the then Dy Commissioner, Gulbarga to submit a complaint against the DGOs in connection with the subject matter of this complaint. However, the said Dy Commissioner after perusing the documents dismissed the claims of the complainant orally. The meeting held by the then Dy Commissioner on 18/3/2006. The said Dy Commissioner had instructed for the purchase of 8 fogging machine to control the mosquito menace in that

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area. The then health officer in charge,<sup>call the</sup> quotation from local vendors for the said 8 fogging machines without following procedure as laid down in Karnataka Transparency in Public Procurements Act, 1999 and Rules. The DGOs not working on the above said period, the DGO No.1 and 2 assumed the position of the health officer as well as Commissioner of Gulbarga in the said area in July 2006. These DGOs followed the provisions of KTPP rules in purchase of 40 fogging machines and hence the allegations against the DGOs not sustainable. Hence, prayed for drop the charges leveled against them.

The disciplinary authority has examined two witnesses as Pw.1 and 2, the complainant Sri Shaik Shafi Ahmed, Kalaburgi as PW.1 and Sri. Timmaiah M. @ Venkatesh T.M, Retired Assistant Controller, Bangalore examined as Pw.2, Ex.P1 to P8 are got marked. Dr. Abhay Kumar, Health Officer, Aland, Gulbarga – DGO No.1 has examined as Dw.1 and Sri Tippesh, retired Commissioner, TMC, Gulbarga – DGO No.2 has examined as Dw.2 and DGOs have not exhibited any documents.

The disciplinary authority and DGOs have filed the written in brief and heard the submission of both sides. I answer the above charges in **AFFIRMATIVE** for the following:

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under Rule 14-A of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. Hence, the charge.

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### REASONS

3) It is the prime duty of the disciplinary authority to prove the charges substantially that are leveled against the DGOs.

4) The disciplinary authority examined two witnesses as PW.1 and 2 and Ex.P1 to 8 are got marked. PW.1 is deposed in his chief examination that,

DGO No.1 had misappropriated the funds in purchasing the fogging machine with Rs.10,21,000/- in the year 2006. Since the fogging machines actually not put for use and also DGOs given incomplete information regarding the said fogging machines. And further he deposed in his cross examination that he had received the letter dated 14/12/2007 of the DGO No.1. On the basis of said letter he visited the office of the DGO No.1 and questioned where the fogging machines were. But, the DGO replied that the fogging machines are under repair. And further Pw.1 denying the suggestion made by the DGOs side.

Further the DGOs side not put any question on the Pw.1 related to the charge leveled against them ie., they have not mentioned in the tender notification and also concerned quotation received from the supplier of the fogging machines and also in the acceptance of the tender, regarding the capacity and description of fogging machines.

5) The Pw.2 is the Investigating officer, who submit the Ex.P8 report. In his evidence also he deposed that at the

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time of inspection of documents he found that the DGOs comply all the formalities under KTPP Act in respect of purchasing of 40 fogging machines except mentioning the capacity and description of the fogging machines which were accepted by the DGOs at the time of tender acceptance.

6) Pw.2 is the I.O submitted his report as per Ex.P8. He deposed that, during the period of DGOs they have purchased 20 fogging machines in July 2006 for Rs.19,500/- each and 20 fogging machines in October 2006 for Rs.22,700/- each and compared to the 8 fogging machines in the month of March 2006 for Rs.24,500/- each, the above said purchased values are low. But further he deposed that he unable to check the fogging machines purchased in the month of July and October with rate of the said machines and mentioning the differentiation of rate because the DGO not mentioned the description and capacity of the said fogging machines. Further he deposed that the DGO follows the KTPP Act at the time of purchasing the fogging machines except mention the description and capacity of the said fogging machines. The DGO No.1 and 2 are examined as Dw.1 & 2 not stated anything about that, why they have not mentioned the description and capacity of the said fogging machines in the tender notification and also at the time of accepting the tender in respect of the said 40 fogging machines. The complainant Pw.1 produce the Ex.P4 document it consists 10 sheets. It includes the information given by the DGOs

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office ie., City Corporation, Gulbarga under the RTI Act that is mentioned as **Annexure-A3**. In the said information also they have not mentioned the specification, model and capacity of the purchased fogging machines. Pw.1 produced the comparative list of the quotation regarding the fogging machines purchased by the city Corporation, Gulbarga on 19/3/2006. As per the said list. 3 persons submit their quotation ie., M/s Vasavi Fertilizer, Shahapur submit its quotation for Rs.24,900/- per fogging machine. 2) M/s Appaji Agri Associates, Gulbarga Rs.24,500/- fogging machine, 3) M/s Sharana Basaveshwar Krushi Kendra, Sagar for Rs./24,800/- per fogging machine. Tender accepted for Rs.24,500/- fogging machines. As per the comparative statement of the quotation from the different persons regarding tender of purchasing fogging machines dt: 18/7/2006 1) SMD Engineers and contractors, Jewargi quoted a) Rs.24,000/- per fogging machines with guarantee, b) Rs.29,900/- per fogging machines with guarantee, 2) Prince Formacitical distributor Gulbarga quoted Rs.22,900/- per fogging machines, 3) Chetana Machinery Stores, Gulbarga quoted Rs.19,500/- per fogging machines, 4) M/s Appaji Agri Associates, Gulbarga Rs.24,500/- for fogging machine, 5) M/s Basav Agency, Gulbarga quoted Rs.24,500/- per fogging machines, 6) M/s Lysis Business scheme quoted Rs.27,850/- per fogging machines, and tender accepted for Rs.19,500/- which was quoted by the Chetana machineries, Gulbarga in the said quotation and comparative statement list for acceptance of tender not

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mentioned the description and capacity of the fogging machines.

7) The Pw.2 produced some documents along with report which are received at the time of investigation from the DGOs office. Perused the said documents, on 23/3/2006 M/s Appaji Agri Associates submitted its quotation to the DGO No.2 office, in the said quotation, particulars of the fogging machine stated as, portable fogging machines (LOC) with fogging capacity of 6 liters per hour and cost of per unit was Rs.24,500/- ie., purchased in the month of March 2006.

8) The Xerox copy of the bill dated 18/8/2006, 7/8/2006 and 2/8/2006 issued by the Chetana Machinery stores to the Commissioner, City Corporation, Gulbarga regarding purchase of 20 fogging machines in the month of July. In the said bills the description of the fogging machines only stated as LOC and fogging machines gas based and not stated the capacity of the said machine. Also the said documents consists the quotation submitted by the Chetana machines stores dated 28/7/2006 in the said document also only stated the model of the said fogging machines as SAMI/LOC (Portable) hand held fogging equipment fuel used aerosol can containing gas. The price of the per unit was Rs.19,500/-, but capacity of the said machine was not mentioned. For the same tender, M/s Appaji Agri Associates submitted its quotation dated 28/7/2006. In the said quotation the said associates mentioned with particulars of the machines as follows.

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LOC portable fogging machines running with aerosol (LPG) with a fogging capacity of 6 to 8 ltrs per hour. Rate of per unit was Rs.24,500/-. In the said tender Basava Agency submitted its quotations on 28/7/2006, in quotation also description and capacity of the fogging machines disclosed and also rate of per unit mentioned as Rs.24,500/-. The DGO published the short term tender notification dt: 18/7/2006 in the said notification they have called for tender notification for registered firms or manufactures for supply of 20 numbers of portable gas base/aerosol fogging machines and aerosol cylinder for the use of city corporation, Gulbarga. In the said notification also the DGOs not mentioning the capacity of the fogging machines. The Pw.2 also produced another documents regarding acceptance of the tender in the month of October 2006. In the said comparative list of tender and acceptance, rate quoted by the Lakshmi Traders Jewargi for Rs.22,700/- per fogging machines and rate quoted by the M/s Appaji Agri Associates, Gulbarga 24,500/- and rate quoted by Balaji Agency Gulbarga Rs.23,500/- per fogging machines. But, in the said document not mentioning the description and capacity of the fogging machines which accepted by the DGO 1 and 2 ie., quotation made by the Lakshmi Traders, Jewargi for 22,700/- per fogging machines. And also produce the quotation submitted by the Lakshmi Traders, Jewargi dated 15/11/2006 to the Commissioner, City Corporation Gulbarga in the said document also capacity of the fogging machines was not display.



9) The DGOs submitted in their written brief that the Pw.2 ie., the Investigating officer has categorically admitted in his cross examination that the DGO 1 and 2 have followed the procedure as laid down in the KTPP rules while calling for tender the 40 fogging machines and that the DGOs have not committed any violations as per the Act. Further submitted that, the fogging machines procure in July 2006 and October 2006 were of a lower capacity as confirmed by the Pw.2 and due to this act also the prizes could have been lower and not standing the reason no loss has been caused to exchequer and it is an admitted fact that the fogging machines have been procured and used. But the charge leveled against them is as follows :

“During the period of DGO 1 and 2 in city Corporation, Gulbarga from July 2006 to October 2006 had purchased 20 fogging machines @ Rs.19,500/- each from M/s Chetana Enterprise and 20 fogging machines Rs.22,700/- each from Sri Lakshmi Traders, Jewargi from calling tender without mentioning the capacity of the fogging machines were of lesser capacity.”

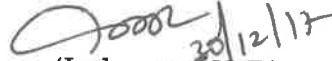
The above said documents and oral evidence of the Pw.1 and 2 and Dw.1 and 2 and Written brief of the DGOs clearly reveals that the DGO<sup>✓</sup> failed to mentioning the capacity of fogging machines in the tender notification and also not mentioning the capacity of the fogging machines in the quotation submitted by the above said M/s Chetana Enterprises, Gulbarga and Sri Lakshmi Traders, Jewargi. Pw.2 also in his report Ex.P8

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stated the same facts and further the DGOs not given any explanation in their oral evidence and in their written statement as well as written brief why they have not mentioning the capacity of the fogging machines ie., 40 fogging machines were lesser capacity.

10) Thereby DGOs failed to disprove the charge leveled against them. Thereby the DGO 1 and 2 being Government servants committed dereliction of duty as provided under 3(1)(i)to (iii) of KCS (CCA) Rules, 1957.

11) In the event of the circumstances, the charges leveled against the DGOs are proved. Hence, this report is submitted to Hon'ble Upalokayukta-1 for further action.

  
(Lokappa M.R)

Additional Registrar Enquiries-9  
Karnataka Lokayukta,  
Bangalore

**i) List of witnesses examined on behalf of Disciplinary Authority.**

|      |   |
|------|---|
| Pw.1 | Sri Shaik Shafi Ahmed, RTI Activist, Kalaburgi                            |
| Pw.2 | Sri. Timmaiah M. @ Venkatesh T.M, Retired Assistant Controller, Bangalore |

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**ii) List of Documents marked on behalf of Disciplinary Authority.**

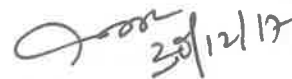
|          |  |
|----------|--|
| Ex.P1    | Written complaint dt 14/1/2008                   |
| Ex.P1(a) | Signature of the complainant                     |
| Ex.P2    | Complaint Form No.I                              |
| Ex.P2(a) | Signature of the complainant                     |
| Ex.P3    | Complaint Form No.II                             |
| Ex.P3(a) | Signature of the complainant                     |
| Ex.P4    | Copies of documents (10 sheets)                  |
| Ex.P5    | Comments of the DGO 2 dt: 9/1/2012               |
| Ex.P6    | Comments of the DGO dt: 2/11/2011                |
| Ex.P7    | Common rejoinder dt: 9/2/2012 of the complainant |
| Ex.P7(a) | Signature  |
| Ex.P8    | Investigation report dt: 7-8/9/2011              |
| Ex.P8(a) | Signature of the Audit Officer                   |

**iii) List of witnesses examined on behalf of DGO.**

|      |  |
|------|--|
| Dw.1 | Sri Abhay Kumar, Health Officer, Aland, Gulbarga |
| Dw.2 | Sri M. Thippesh, Retired Officer, Bangalore      |

**iv) List of documents marked on behalf of DGO**

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| <b>:: NIL ::</b> |  |
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( Lokappa N.R )

Additional Registrar Enquiries-9  
Karnataka Lokayukta,  
Bangalore



**GOVERNMENT OF KARNATAKA**



**KARNATAKA LOKAYUKTA**

NO:UPLOK-1/DE/451/2015/ARE-9

Multi Storied Building,  
Dr. B.R. Ambedkar Veedhi,  
Bengaluru-560 001,  
Date: 03/01/2018

**RECOMMENDATION**

Sub:- Departmental inquiry against;

- (1) Dr. Abhay Kumar, Health Officer, Kalaburagi Mahanagara Palike, Kalaburagi; and
- (2) Sri Thippesh, the then Commissioner, Kalaburagi Mahanagara Palike, Kalaburagi - Reg.

Ref:- 1) Government Order No.ನಅಇ 35 ಎಸಿಜಿ 2015, Bengaluru dated 25/8/2015.

2) Nomination order No.UPLOK-1/DE/451/2015, Bengaluru dated 11/9/2015 of Upalokayukta-1, State of Karnataka, Bengaluru

3) Inquiry Report dated 30/12/2017 of Additional Registrar of Enquiries-9, Karnataka Lokayukta, Bengaluru

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The Government by its Order dated 25/8/2015, initiated the disciplinary proceedings against (1) Dr. Abhay Kumar, Health Officer and (2) Sri Thippesh, the then Commissioner, Kalaburagi Mahanagara Palike, Kalaburagi (hereinafter referred to as Delinquent Government Officials 1 and 2, for short as '**DGO-1 and DGO-2**') and entrusted the Departmental Inquiry to this Institution.

2. This Institution by Nomination Order No.UPLOK-1/DE/451/2015, Bengaluru dated 11/9/2015 nominated Additional Registrar of Enquiries-6, Karnataka Lokayukta, Bengaluru, as the Inquiry

Officer to frame charges and to conduct Departmental Inquiry against DGOs 1 and 2 for the alleged charge of misconduct, said to have been committed by them. Subsequently, by Order No. UPLOK-1/DE/2016, Bengaluru dated 3/8/2016, the Additional Registrar of Enquiries-9, Karnataka Lokayukta, Bengaluru was re-nominated as Inquiry Officer to conduct departmental inquiry against DGOs 1 and 2.

3. The DGO-1 Dr. Abhay Kumar, Health Officer and DGO-2 Sri Thippesh, the then Commissioner of Kalaburagi Mahanagara Palike, Kalaburagi were tried for the following charges:-

“That you, Dr. Abhay Kumar, while working as Health Officer (hereinafter referred to as Delinquent Government Servant, DGO No.1 for short) and you Sri Thippesh while working as Commissioner (referred to as DGO No.2) in City Corporation Gulbarga during the period from July 2006 to Oct. 2006 had purchased 20 fogging machines at the rate of Rs.19,500/- each from M/s. Chetan Enterprises, Gulbarga and 20 fogging machines at the rate of Rs.22,700/- each from Shree Lakshmi Traders, Jevargi by calling tender without mentioning the capacity of fogging machines and the said 40 fogging machines were of lesser capacity and thereby you – DGO No.1 and 2 being Government Servants have failed to maintain absolute integrity, besides absolute devotion to duty and acted in a manner unbecoming of Government Servants and committed misconduct as provided under Rule 3(1)(i) to (ii) (iii) of KCS (Conduct) Rules, 1966 and thereby committed grave misconduct.”

4. The Inquiry Officer (Additional Registrar of Enquiries-9) on proper appreciation of oral and documentary evidence has held that the Disciplinary Authority has proved the above charges against DGO-1 Dr. Abhay Kumar, Health Officer and DGO-2 Sri Thippesh, the then Commissioner of Kalaburagi Mahanagara Palike, Kalaburagi.

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 Statements submitted by DGOs 1 & 2, DGO-1 Dr. Abhay Kumar, Health Officer is due to retire from service on 31/8/2027 and DGO-2 Sri Thippesh, the then Commissioner has retired from service on 31/7/2016 (during the pendency of inquiry).

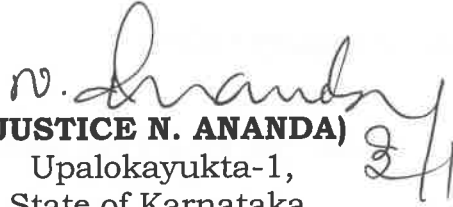
7. Having regard to the nature of charges proved against DGO-1 Dr. Abhay Kumar and DGO-2 Sri Thippesh,

- (i) it is hereby recommended to the Government to impose penalty of withholding four annual increments payable to DGO-1 Dr. Abhay Kumar, Health Officer, Kalaburagi Mahanagara Palike, Kalaburagi with cumulative effect and also deferring the promotion of DGO-1 Dr. Abhay Kumar by two years, whenever he becomes due for promotion;

(ii) it is hereby recommended to the Government to impose penalty of withholding 10% of pension payable to DGO-2 Sri Thippesh, the then Commissioner, Kalaburagi Mahanagara Palike, Kalaburagi for a period of 10 years.

8. 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