

GOVERNMENT OF KARNATAKA



KARNATAKA LOKAYUKTA

No: UPLOK-1/DE/500/2016/ARE-10
UPLOK-1/DE/721/2017/ARE-10

Multi Storied Buildings,
Dr.B.R.Ambedkar Veedhi,
Bengaluru-560 001,
Date: 15/03/2019.

RECOMMENDATION

Sub:- Departmental inquiry against;

- 1) Sri K.B. Veerapur, Deputy Director of Co-operation Department, Raichur District.
- 2) Sri Tejamurthy, the then Assistant Executive Engineer, City Municipal Council, Sirsi, Uttara Kannada District – Reg.

Ref:- 1) Government Order No. ಸಇ 119 ಎಲಿಸೇ 2016 Bengaluru dated 14/10/2016.

- 2) Nomination Order No.UPLOK-1/DE/500/2016 Bengaluru dated 21/10/2016 of Upalokayukta-1, State of Karnataka, Bengaluru, with regard to DGO-1 Sri K.B. Veerapur, Deputy Director of Co-operation Department, Raichur District.
- 3) Government Order No. ನಅಇ 103 ಡಿಎಂಕೆ 2016 Bengaluru dated 19/05/2017 and its Corrigendum dated 15/12/2017.
- 4) Nomination Order No.UPLOK-1/DE/721/2017 Bengaluru dated 31/05/2017 with regard to DGO-2 Sri Tejamurthy, the then Assistant Executive Engineer, City Municipal Council, Sirsi, Uttara Kannada District.
- 5) Inquiry Report dated 13/03/2019 of Additional Registrar of Enquiries-10, Karnataka Lokayukta, Bengaluru

The Government by its Order dated 14/10/2016 initiated the disciplinary proceedings against Sri K.B. Veerapur, Deputy Director of Co-operation Department, Raichur District (hereinafter

referred to as Delinquent Government Official for short as DGO-1) and entrusted the Departmental Inquiry to this Institution.

2. The Government by its Order dated 19/05/2017 read with its Corrigendum dated 15/12/2017 initiated the disciplinary proceedings against Sri Tejamurthy, the then Assistant Executive Engineer, City Municipal Council, Sirsi, Uttara Kannada District (hereinafter referred to as Delinquent Government Official for short as DGO-2) and entrusted the Departmental Inquiry to this Institution.

3. This Institution by Nomination Order No.UPLOK-1/DE/500/2016 dated 21/10/2016 nominated Additional Registrar of Enquiries-10, Karnataka Lokayukta, Bengaluru, as the Inquiry Officer to frame charges and to conduct Departmental Inquiry against DGO-1 for the alleged charge of misconduct, said to have been committed by him.

4. This Institution by Nomination Order No.UPLOK-1/DE/721/2017 dated 31/05/2017 nominated Additional Registrar of Enquiries-10, Karnataka Lokayukta, Bengaluru, as the Inquiry Officer to frame charges and to conduct Departmental Inquiry against DGO-2 for the alleged charge of misconduct, said to have been committed by him.

5. Further, by order dated 22/7/2017 the Inquiry No.UPLOK-1/DE/721/2017 is clubbed with Inquiry No. UPLOK-1/DE/500/2016.

6. The DGO-1 Sri K.B. Veerapur, Deputy Director of Co-operation Department, Raichur District was tried for the following charge:-

“That, you DGO – Sri. K.B. Veerapura – Deputy Director of Co-Operative Department, Raichur District, the then Commissioner, City Municipal Council, Sirsi while working as Commissioner in CMC, Sirsi in Uttara Kannada District had arranged for making payment of Rs.18,30,418/- to the contractor merely on the basis of supply of water meters to CMC by taking stock of said meters even though they were not fixed to the taps as per terms of contract and you DGO has violated the G.O. FD 56 PRO Cell 2004, Bengaluru dated 18/01/2005, by arranging payment without getting the check-measurement of 25% work by the Executive Engineer. Thus you DGO, being a Government/public servant has failed to maintain absolute integrity besides devotion to duty and acted in a manner unbecoming of a Government servant and thus committed misconduct as enumerated U/R 3(1) of Karnataka Civil Service (Conduct) Rules 1966.”

7. The DGO-2 Sri Tejamurthy, the then Assistant Executive Engineer, City Municipal Council, Sirsi, Uttara Kannada District were tried for the following charge:-

“That, you DGO – Sri. Tejamurthy, the then Assistant Executive Engineer, City Municipal Council, Sirsi, had arranged for making payment of Rs.18,30,418/- to the contractor merely on the basis of supply of water meters to CMC by taking stock of said meters even though they were not fixed to the taps as per terms of

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contract and you DGO has violated the G.O. F D 56 PRO Cell 2004, Bengaluru dated 18/01/2005, by arranging payment without getting the check measurement of 25% work by the Executive Engineer. Thus, you DGO, being a Government / public servant has failed to maintain absolute integrity besides devotion to duty and acted in a manner unbecoming of a Government servant and thus committed misconduct as enumerated U/R 3(1) of Karnataka Civil Service (Conduct) Rules 1966.”

8. 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 K.B. Veerapur, Deputy Director of Co-operation Department, Raichur District and DGO-2 Sri Tejamurthy, the then Assistant Executive Engineer, City Municipal Council, Sirsi, Uttara Kannada District.

9. 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.

10. As per the First Oral Statement submitted by DGOs 1 and 2;

- i) DGO-1 Sri K.B. Veerapur is due to retire from service on 30/09/2027;
- ii) DGO-2 Sri Tejamurthy is due to retire from service on 31/01/2028.

11. Having regard to the nature of charge proved against DGO-1 Sri K.B. Veerapur and DGO-2 Sri Tejamurthy;

- i) it is hereby recommended to the Government for imposing penalty of withholding four annual increments payable to DGO-1 Sri K.B. Veerapur, Deputy Director of Co-operation Department, Raichur District, with cumulative effect and also for deferring the promotion of DGO-1 Sri K.B. Veerapur for a period of four years, whenever he becomes due for promotion.
- ii) It is hereby recommended to the Government for imposing penalty of withholding four annual increments payable to DGO-2 Sri Tejamurthy, the then Assistant Executive Engineer, City Municipal Council, Sirsi, Uttara Kannada District with cumulative effect and also for deferring the promotion of DGO-2 Sri Tejamurthy for a period of four years, whenever he becomes due for promotion.

12. 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

KARNATAKA - LOKAYUKTA

BEFORE ADDITIONAL REGISTRAR (ENQUIRIES -10)

PRESENT :

SRI. MASTER R.K.G.M.M. MAHASWAMIJI, MA., LL.M.,
 ADDITIONAL REGISTRAR ENQUIRIES-10,
 M.S. BUILDING,
 KARNATAKA LOKAYUKTA,
 BANGALORE - 560 001.

DEPARTMENTAL ENQUIRY NO. UPLOK-1/DE-500/2016 & 721/2017/ARE-10

COMPLAINANT	SRI. KIRAN NARAYAN PRABHU
DISCIPLINARY AUTHORITY	GOVERNMENT OF KARNATAKA CO-OPERATION & URBAN DEVELOPMENT DEPARTMENT, <i>(Through the Presenting Officer)</i>
V/s	
DELINQUENT GOVERNMENT OFFICIALS	<ol style="list-style-type: none"> 1. SRI K.B. VEERAPURA, <i>Deputy Director of Co-operative Department, Raichur District (the then Commissioner, City Municipal Council, Sirsi). (DGO-1 in D.E. No. 500/2016)</i> 2. SRI. TEJAMURTHY, <i>The then Assistant Executive Engineer, City Municipal Council, Sirsi. (DGO-2 in D.E. No. 721/2017)</i> <p style="text-align: center;"><i>(DGOs-1 & 2 represented by Sri. Basavaraj S Manoli Defense Assistant).</i></p>

Subject : Departmental Inquiry against DGOs as noted in the cause title -reg.

Reference/s :

1. *Common Report u/S 12(3) of the Karnataka Lokayukta Act, 1984 in Compt/Uplok/BGM/2295/2015/ARE-6 dated 18.08.2016.*
2. *Government Order No. SaE 119 AleSe 2016 Bengaluru dated 14.10.2016 in respect of DGO-1.*
3. *Government Order No. UDD 103 DMK 2016, Bengaluru dated 25.07.2017 in respect of DGO-2.*



4. *Nomination Order* No.Uplok-1/DE/500/2016
Bengaluru dt. 21.10.2016 of Hon'ble
Uplokayukta-1 in respect of DGO-1.
5. *Nomination Order* No.Uplok-1/DE/721/2017
Bengaluru dt. 31.05.2017 of Hon'ble
Uplokayukta-1 in respect of DGO-2.

- i. Nature of Case. : Departmental Enquiry
- ii. Provision of law under which Article of charge/s framed. : U/R 3 (1) Karnataka Civil Services(Conduct) Rules, 1966.
- iii. Date of Submission of report. : 13th **March** 2019.

-: DEPARTMENTAL - COMMON ENQUIRY - REPORT :-

1. The departmental enquiry No. Uplok-1/DE/500/2016/ARE-10 against DGO-1 Sri. K.V. *Veerapura* and departmental enquiry No. Uplok-1/DE/721/2017/ARE-10 against DGO-2 Sri. *Tejamurthy*, are clubbed together by the approval of Hon'ble Upalokaykta dated 24.07.2017, since those are arising out of same incident. Hence, a common report is submitted in respect of above.

2. This common departmental enquiry initiated and held against DGOs 1 & 2 as the complainant by name Sri. *Kiran Narayan Prabhu* has filed a complaint in Lokayukta Office against the



Delinquent Government Officials-1 & 2 alleging their dereliction of duty amounting to misconduct.

3. The *comments* of DGOs 1 & 2 called and unsatisfied with the comments of DGOs 1 & 2 a *common Report* was sent to the Government u/S 12(3) of the Karnataka Lokayukta Act, 1984 as per reference No. 1. In pursuance of the report, Government was pleased to issue the Government Order (G.O.) dated 14.10.2016 in respect of DGO-1 and another Government Order (G.O.) dated 19.05.2017 in respect of DGO-2, authorizing Hon'ble Upalokayukta-1 to hold an enquiry as per reference no. 2 & 3.
4. In pursuance of the Government Orders, two separate nomination order/s issued by Hon'ble Upalokayukta-1 on 21.10.2016 and 31.05.2017 in respect of DGOs-1 & 2 respectively, authorizing ARE-10 to frame Article of Charge against DGOs 1 & 2 and to hold an enquiry to find out truth and to submit a report as per reference No. 4 & 5.
5. Accordingly, *Article of charge* in respect of DGOs-1 & 2 framed/prepared separately under Rule 11(3) of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, and sent to the Delinquent Government Officials on 11.01.2017 & 25.07.2017 respectively.



6. The common article of *charge* and the statement of imputations of misconduct framed/prepared and leveled against the DGOs-1 & 2 are **reproduced** as *hereunder* :-

ANNEXURE NO. 1
CHARGE

6(1) That, you DGO-1 Sri. K.B. *Veerapura*, Deputy Director of Co-operative Department, Raichur District (the then Commissioner, City Municipal Council, Sirsi & DGO-2 Sri. *Tejamurthy*, the then Assistant Executive Engineer, City Municipal Council, Sirsi, have committed following *dereliction of duty/misconduct*:-

6(2) You DGOs-1 & 2 have arranged for making payment of Rs.18,30,418/- to the contractor merely on the basis of supply of *water meters* to CMC by taking stock of the said meters, even though those were not fixed to the taps as per terms of contract and you DGOs have violated the G.O. F D 56 PRO Cell 2004, Bengaluru dated 18/01/2005, by arranging *payment* without getting the *check measurement* of 25% work by the Executive Engineer.



6(3) *Thus*, you DGOs, being Government /public servants have *failed* to maintain absolute integrity besides devotion to duty and acted in a manner unbecoming of Government servants and *thereby*, you have committed *misconduct*, U/R 3(1) of Karnataka Civil Service (Conduct) Rules 1966.

ANNEXURE NO. II
STATEMENT OF IMPUTATIONS OF MISCONDUCT

6(4) *According to the complainant*, Sri. D. N. *Madhavan*, Executive Engineer Urban Development Cell, Karwar despite Deputy Commissioner, Uttara Kananda, had directed to submit a report after spot inspection about illegal payment of Rs.18.50 lakh made by officers of CMC, Sirsi to contractor without fixing water meters to the water taps as per terms of contract, has not submitted report to protect the officers responsible.

6(5) The *comments* of Sri D. N. *Madhavan* was called and he has submitted comments stating *that* he had made spot inspection on 04/06/2015 and submitted report dated 05/06/2015 and allegations of not making spot inspection, non submission of report and had adopted delay tactics to help concerned officers are not correct.



6(6) On going through the report submitted by Sri. Madhavan and records relating to tender including terms and conditions, Sri. Mahendra Kumar- Commissioner in CMC at Sirsi (2) Sri. K.V.Veerapura – the then Commissioner, CMC, Sirsi, Presently, Deputy Director Co-Operative Audit Co-Operation Department, Raichur District and (3) Sri. Tejamurthy- Assistant Executive Engineer in CMC at Sirsi, presently, District Development Cell, Mangalore were impleaded and comments were called for, from them on the report of Sri. Madhavan. The DGO, Sri. K.V. Veerapura and Sri. Mahendra Kumar have submitted their comments denying the allegations.

6(7) On going through the above stand taken by the DGO, Sri. Mahendra Kumar and Sri. Tejamurthy and investigation report of Sri. Madhavan, the following facts stand prima-facie demonstrated :-

(i) Work of supply and fixing of water meters in the limits of CMC Sirsi under 2011-12 SFC scheme with estimate of Rs. 24/- lakh was assigned to the contractor when Sri. K.V. Veerapur and DGO were working as Commissioner and AEE respectively in CMC at Sirsi.



(ii) As per terms of contract, the contractor was required to supply required 1800 number of water meters and fix them to the taps.

(iii) DGO and Sri. K.V. Veerapura had arranged for making payment of Rs.18,30,418/- to the contractor merely on the basis of supply of water meters to CMC by taking stock of said meters even though they were not fixed to the taps as per terms of contract:

(iv) As per G.O. FD 56, PRO, Cell-2004, Bengaluru dated 18/01/2005 all works executed worth of more than Rs.25,000/-, 25% of the works are required to be check measured by EE but in this case, 100% check measurement is made by AEE while approving payment of Rs. 18,30,418/- which is in violation of G.O.

(v) Sri. Mahendra Kumar was not working when the work was undertaken and payment was made and hence cannot be held responsible.

(vi) Sri. Madhavan having been assigned with work of inspection has in fact inspected and submitted report.

6(8) A careful consideration of the material on record, shows that:-

i) The DGO and Sri. Veerapura K.V. while working as AEE and Commissioner in CMC Sirsi in Uttara Kannada District had arranged for making payment of Rs.18,30,418/- to the contractor merely on the basis of supply of water meters to CMC by taking stock of said meters even though they were not fixed to the taps as per terms of contract.



ii) The DGO and Sri. Veerapura K.V. have violated the G.O. F D 56 PRO Cell 2004, Bengaluru dated 18/01/2005, by arranging payment without getting the check measurement of 25% of work by the Executive Engineer.

6(9) In view of the *reply* of the Sri. Madhavan and Sri. Mahendra Kumar, Sri. Madhavan having been assigned with work of inspection has in fact inspected and has submitted report and Sri. Mahendra Kumar was not working when the work was undertaken and payment was made and hence, no report is made against Sri. Madhavan and Sri. Mahendra Kumar.

6(10) In view of the facts stated above and the material on record, reply of the DGO has not been found satisfactory to drop the proceedings.

6(11) The facts supported by the material on record *shows that* the DGO, being a Government servant, has *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.



6(12) Since the said facts and material on record prima-facie *shows that*, the DGO has committed misconduct as per Rule 3(1)(i) to (iii) of the KCS (Conduct) Rules, 1966, a *report* u/s 12(3) of Karnataka Lokayukta Act, 1984 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.

6(13) *In turn*, the Competent Authority initiated disciplinary proceedings against DGOs-1 & 2 and entrusted the enquiry to this Institution and Hon'ble Upalokayukta nominated this enquiry Authority, to conduct enquiry and to submit a report. *Hence*, the above said *charge*.

7. The aforesaid *article of charge* served upon the DGOs 1 & 2 and they appeared before this enquiry authority and their *first oral statement/s* under Rule 11(9) of KCS (CCA) Rules, 1957 recorded. The DGOs 1 & 2 have pleaded not guilty and claimed to be enquired about the charge.



8. In this Departmental Enquiry, it is taken that, DGO-1 has *not filed Written Statement of defense* by the order/note dated 04.03.2017. Whereas, DGO-1 has filed his Written statement of defense stating that he has not committed dereliction of duty/misconduct.
9. The DGOs have been given an opportunity by this Enquiry Authority for verification / inspection of records/documents and for discoveries, if any.
10. *In this enquiry*, to establish the *common charge* against DGOs 1 & 2, the presenting officer has examined (1) Sri Kiran Narayana Prabhu (complainant) as ***pw-1*** and produced and got marked, in all, **15** documents as Ex P1 to 15 on behalf of Disciplinary Authority.
11. After the closure of the evidence of the Disciplinary Authority, *second oral statement/s* of DGOs-1 & 2 as per Rule 11(16) of Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 recorded. The DGO-2 has submitted that he will examine himself. Accordingly, the delinquent government official-2 is examined himself as DW1 and got marked the documents as Ex. D-1 to 13, and closed his side. As such, the *questionnaire* of DGO-2



u/R 11(18) of KCS (CCA) Rules, 1957 is *dispensed with* as he examined himself.

12. *Whereas*, DGO-1 is submitted that he has no defense evidence. Hence, the *questionnaire* of DGO-1 u/R 11(18) of KCS (CCA) Rules, 1957 is *recorded and he admitted almost all the questions*.

13. I have heard learned Presenting Officer and defense assistant/Advocate appearing for DGOs 1 & 2.

14. *Now*, the common points that emerge for my consideration and conclusion are *as follows* :-

1 : *Whether the common charge against DGOs 1 & 2 as noted at para No. 6(2) of the report is proved by the Disciplinary Authority through its presenting officer?*

2 : *What finding / conclusion ?*

15. I have heard and carefully perused the enquiry papers and analyzed and appreciated the oral and documentary evidence placed on record.

16. My *findings* on aforesaid common points are *as under*:-



COMMON POINT No. 1 : IN THE AFFIRMATIVE

COMMON POINT No. 2 : As per my

FINDING/CONCLUSION

for the following ;

*** REASONS ***

17. COMMON POINT NO. 1 : *It is the case of the Disciplinary Authority that DGO-1 being Deputy Director of Co-operative department, then Commissioner, CMC, Sirsi and DGO-2 being the then Assistant Executive Engineer, CMC, Sirsi, have committed dereliction of duty amounting to misconduct as mentioned in para 6(2) of the report.*
18. *In order to prove the common charge leveled against DGOs 1 & 2, the presenting officer has examined 1 witness and got marked 15 documents and closed the side.*
19. *Now, I shall proceed to appreciate and analyze the oral and documentary evidence of the disciplinary authority viz.,(PW1 and Ex P1 to 15) which are as follows:-*



20. PW- 1 SRI KIRAN NARAYANA PRABHU (complainant/ Contractor) *he deposes that*, during the year 2011-12 under SFC Scheme a tender was called at an estimated cost of Rs. 24 lakhs for purchase of *meters* to the taps.
21. *PW-1 further deposes that*, before completion of work a sum of Rs.18,30,000/- was paid to the contractor. Measurement and check measurement was not done to the extent of 25% by the Executive Engineer. Therefore, he lodged complaint to Lokayukta office along with form no.1 (complaint) and Form No. 2 (affidavit) as per Ex. P-1 to 3.
22. *PW-1 states that*, he has submitted rejoinder, Copy of order by Director of Municipalities, Information by Project Director, Investigation report by Executive Engineer, Government proceedings (3 sheets), 3 Government circulars dated 23.03.2007, 04.01.2008 and 20.01.2009, Requisition submitted to the office of Deputy Commissioner, Stock receipts and Copy of attendance register as per Ex. P-4 to 15 respectively.
23. *In the cross-examination of PW-1*, I find that no worth mentioning points are elicited in favour of DGOs to disbelieve/discredit the deposition of PW-1.
24. It is the case of DGOs 1 & 2/**Defence** *that* they did not commit dereliction of duty amounting to misconduct.



25. *In this regard, SRI TEJAMURTHY (Assistant Executive Engineer/DGO-2), has examined himself as DW-1 by filing affidavit evidence and stated by reiterating his defence case. Whereas, DGO-1 did not lead defense evidence.*
26. *In so far as argument/s in this enquiry is concerned, the learned presenting officer has submitted that PW-1 is examined and Ex. P-1 to P-15 have been got marked and on the basis of the same, the affirmative finding can be given against the DGOs-1 & 2 as common charge against them is proved.*
27. *Per contra, the learned defence assistant appearing for DGO-1 and 2 have filed common written brief.*
28. *Having heard and on careful perusal and appreciation of oral and documentary evidence of disciplinary authority placed on record, it is obviously clear that the disciplinary authority has placed sufficient and satisfactory oral and documentary evidence to prove its case/enquiry against the DGOs-1 & 2 as per the standard of preponderance of probabilities to warrant my finding on the common charge against DGOs in the affirmative as proved.*
29. *On perusal of deposition of PW-1 Sri. Kiran Narayana*



Prabhu, it can be seen that PW-1 being the complainant, has fully supported the case of disciplinary authority.

30. *It is significant to note that nothing worth mentioning Points are elicited from the evidence/deposition of PW-1 by the learned defense assistant appearing for Delinquent Government Officials. As such, the deposition of PW-1 is worthy of acceptance, believable and reliable.*
31. *It is relevant to note that the deposition of PW-1 is consistent, corroborative and same is fortified by the relevant documents i.e. Ex. P-1 to P-15.*
32. *I find that, there is no substance and considerable force in the line of argument/contention/s taken by the learned defense assistant appearing for DGOs-1 & 2 in the common *Written Brief* and *in my considered opinion* those are devoid of merits, irrelevant and unacceptable. *In addition to that*, the evidence/deposition/s of DGO-2/DW-1 is nothing but, highly interested, inconsistent and cannot be accepted, due to infirmities.*
33. *It is to be noted that, it is not in dispute that DGOs 1 & 2 were working as then Commissioner and then Assistant Executive Engineer in CMC, Sirsi, during the period as*



on the date of commission of dereliction of duty amounting to misconduct.

34. *It is appropriate to note that, although, DGO 2 has examined himself as DW-1 and same is not inspiring confidence and not acceptable and Ex. D-1 to 13 are not helpful to the case of DGO 2 for the reason that those are irrelevant and unacceptable., as there is/are nothing in favour of DGO.*

35. *At this juncture, it is necessary to note that, it is settled position of law that if the opposite party did not choose to lead rebuttal evidence, then, an adverse inference can be drawn against him.*

36. *In this context. It is relevant to refer a decision in case of ESHWAR BAI C. PATEL V/S. NARIHAR BEHERA reported in AIR 1999 SC 1341, wherein, the Hon'ble Apex Court has held that;*

“When a person fails to enter into witness Box to state his case on oath, the adverse Inference can be drawn as per Sec.114 of Indian Evidence Act, against such person”.

37. *In this connection, it is also profitable to refer another decision in case of VIDHYADHAR V/S. MANIKRAO AND ANOTHER (1999) 3 SCC 573, wherein, the Hon'ble Apex Court has held thus:-*

“ Evidence Act, 1872 – S.114 III (g)



Presumption – If a party abstains from entering the witness box, an adverse inference would arise against him.

“ Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set-up by him is not correct”.

38. *In the present case*, the DGO-1 did not choose to file Written Statement of Defense taking his own stand/defense and did not lead the rebuttal/defense evidence in proof of the same to show that, the case of disciplinary authority is false. *Hence*, the presumption of an adverse inference can be drawn against DGO-1, as per section 114 of The Indian Evidence Act, 1882.
39. *It is pertinent to note that*, DGO-1 has clearly admitted the questions put to him as ‘yes’ at the time of recording of his questionnaire that, before completion of work, a sum of Rs. 18,30,000/- was paid to contractor and measurement and check measurement were not done to the extent of 25% by the Executive Engineer etc.
40. *At this juncture*, it is necessary and fruitful to extract the relevant paras *Ex. P-8 the Investigation Report* of Sri. D.N.



Madavan (Executive Engineer), which are extracted as here under :-

“ ಸದರಿ ಪ್ರಕರಣದಲ್ಲಿ ಕಾರ್ಯಪಾಲಕ ಅಭಿಯಂತರರು ಅಥವಾ ಸಹಾಯಕ ಕಾರ್ಯಪಾಲಕ ಅಭಿಯಂತರಿಂದ ಚೆಕ್ ಮೆಜರ್‌ಮೆಂಟ್ ಅಗತ್ಯತೆ ಕುರಿತಾಗಿ ಸರ್ಕಾರಿ ಆದೇಶ ಸಂಖ್ಯೆ ಎಫ್.ಡಿ. 56 ಪಿಅರ್‌ಓ ಸೆಲ್ 2004 ಬೆಂಗಳೂರು ದಿನಾಂಕ 18.01.2005 ರಂತೆ. ಹಾಗೂ ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ನಡವಳಿಕೆಯಲ್ಲಿನ ಪ್ಯಾರಾ 6 ಹಾಗೂ 7 ರಂತೆ ರೂ. 25,000/- ಮೀರಿದ ಎಲ್ಲಾ ಕಾಮಗಾರಿಗಳಿಗೆ ಶೇಕಡ 25 ರಷ್ಟು ಚೆಕ್‌ಮೆಜರ್‌ಮೆಂಟ್‌ನ್ನು ಕಾರ್ಯಪಾಲಕ ಅಭಿಯಂತರರು ಮಾಡಬೇಕಾಗಿರುತ್ತದೆ. ಶಿರಸಿ ನಗರಸಭೆಯಲ್ಲಿ ಮೆಲ್ಕಂಡ ಬಲ್‌ಗಳಿಗೆ ಸಹಾಯಕ ಕಾರ್ಯಪಾಲಕ ಅಭಿಯಂತರಿಂದ ಶೇಕಡ 100 ರಷ್ಟು ಚೆಕ್‌ಮೆಜರ್‌ಮೆಂಟ್ ಮಾಡಿಸಿದ್ದು, ಕಾರ್ಯಪಾಲಕ ಅಭಿಯಂತರಿಂದ ಚೆಕ್ ಮೆಜರ್‌ಮೆಂಟ್ ಮಾಡಿಸದೆ, ಬಿಲ್ಲನ್ನು ಪಾವತಿಸಲು ಕಿರಿಯ ಅಭಿಯಂತರರು ಹಾಗೂ ಸಹಾಯಕ ಕಾರ್ಯಪಾಲಕ ಅಭಿಯಂತರರು ಶಿಫಾರಸ್ಸು ಮಾಡಿರುತ್ತಾರೆ”.

“ಅನುಮೋದನೆಗೊಂಡ ಅಂದಾಜು ಪತ್ರಿಕೆಯ ಕ್ರಮ ಸಂಖ್ಯೆ(4) ಐಟಂರಲ್ಲಿನ KSBR 13-5 ರಲ್ಲಿ Providing and fixing water meter with stop cock, jam nut, socket in GI pipe line including cutting and threading the pipe and making long screws including cost of all materials, labour, Hom at equipment and testing complete as per specifications. Specification No.KBS 13.2.2019/13.16 ಅಂತ ಒಟ್ಟು 1815 ಪ್ರಮಾಣದಲ್ಲಿರುತ್ತದೆ. ಪ್ರತಿ ಪರಿಮಾಣಕ್ಕೆ ರೂ. 1,023.50 ನಂತೆ 18,57653 ಇದ್ದು, ಸದರಿ



ಗುತ್ತಿಗೆದಾರರಿಗೆ ಐಟಂ ನಂ.(4)ಕ್ಕೆ ರೂ. 1023.40 ದರಕ್ಕೆ ಟೆಂಡರ್ ದರ ನಮೂದಿಸಿ, ಒಟ್ಟು ಅಂದಾಜು ಮೊತ್ತಕ್ಕೆ ಶೇಕಡಾ 2.16 ಕಡಿಮೆ ದರಕ್ಕೆ ನಿಯಮದಂತೆ ಅನುಮೋದನೆಯಾಗಿರುತ್ತದೆ”.

“ಈ ಕುರಿತು ಸಂಬಂಧಪಟ್ಟ ಕಡತವನ್ನು ಪರಿಶೀಲಿಸಲಾಗಿ ಗುತ್ತಿಗೆದಾರರು ದಿನಾಂಕ: 24.5.2015 ರಲ್ಲಿ 1260 ಸಂಖ್ಯೆ ಹಾಗೆ 17.6.2013 ರಲ್ಲಿ 540 ಸಂಖ್ಯೆಯಲ್ಲಿ ವಾಟರ್ ಮೀಟರ್ ಒದಗಿಸಿದ ಮತ್ತು ಕ್ರಮವಾಗಿ ರೂ.12,89,610/- ಹಾಗೂ 5,52,269/- ಒಟ್ಟು ರೂ.18,42,300/-ಪಾವತಿಗೆ ಕಿರಿಯ ಅಭಿಯಂತರರು ಹಾಗೂ ಸಹಾಯಕ ಕಾರ್ಯಪಾಲಕ ಅಭಿಯಂತರರು ಶಿಫಾರಸ್ಸು ಮಾಡಿರುತ್ತಾರೆ. ಆದರೆ, ಟೆಂಡರ್ ಕರಾರಿನಲ್ಲಿ Providing and fixing water meter ಎಂಬುದಿದ್ದು, ಸದರಿ ಗುತ್ತಿಗೆದಾರರಿಂದಲೇ ವಾಟರ್ ಮೀಟರ್‌ಗಳನ್ನು ನಗರದ ಕುಡಿಯುವ ನೀರಿನ ನಲ್ಲಗಳಿಗೆ ಅಳವಡಿಸಬೇಕಾಗಿರುತ್ತದೆ”.

“ಆದರೆ, ಹಾಗೆ ಮಾಡದೆ ಸರಬರಾಜುದಾರರಿಂದ 1800 ವಾಟರ್ ಮೀಟರ್ ಖರೀದಿಸಿ ದಾಸ್ತಾನು ಮಾಡಿ ತದನಂತರ ದಿ:22.6.2013 ರಂದು 540 ಸಂಖ್ಯೆ ಹಾಗೆ ದಿ:17.1.2015ರಂದು 1260 ಸಂಖ್ಯೆಯಲ್ಲಿ ವಾಟರ್ ಮೀಟರ್‌ನ್ನು ನಗರದ ಕುಡಿಯುವ ನೀರಿನ ನಲ್ಲಗಳಿಗೆ ಅಳವಡಿಸಲು ಸದರಿ ಸರಬರಾಜುದಾರರಿಗೆ ನೀಡಿರುವುದು ಕಚೇರಿಯ ದಾಸ್ತಾನು ಪುಸ್ತಕದಿಂದ ಕಂಡುಬರುತ್ತದೆ”.

“ ಈ ಎಲ್ಲಾ ಅಂಶಗಳನ್ನು ಪರಿಗಣಿಸಿ ಸಂಬಂಧಪಟ್ಟ ಕಿರಿಯ ಅಭಿಯಂತರರು ಹಾಗೂ ಸಹಾಯಕ ಕಾರ್ಯಪಾಲಕ ಅಭಿಯಂತರರು ಅಗತ್ಯ ಚೆಕ್ ಮೆಷರ್‌ಮೆಂಟ್ ಮಾಡಿಸದೆ ಅನುಮೋದಿತ ಅಂದಾಜು ಪಟ್ಟಿ ಹಾಗೂ ಕರಾರು ಪತ್ರದಲ್ಲರುವಂತೆ ಕಾಮಗಾರಿಯನ್ನು ಪೂರ್ಣವಾಗಿ ನಿರ್ವಹಿಸದೆ ಸಾಮಗ್ರಿಗಳನ್ನು ಮಾತ್ರ ಖರೀದಿಸಿ ದಾಸ್ತಾನು ಪುಸ್ತಕಕ್ಕೆ



ತೆಗೆದುಕೊಂಡು ಗುತ್ತಿಗೆದಾರರು ನಮೂದಿಸಿರುವ ಮೊತ್ತಕ್ಕಿಂತ ಅಧಿಕವಾಗಿ
ಅನುಮೋದಿತ ಅಂದಾಜು ಪಟ್ಟಿಯಂತೆ ಕಾರ್ಯನಿರ್ವಹಿಸದೆ ಹಣ
ಪಾವತಿಮಾಡಿ ಹಣ ದುರುಪಯೋಗ ಮಾಡಿರುವುದು ಸ್ಪಷ್ಟವಾಗಿ ಕಂಡು
ಬಂದಿರುತ್ತದೆ”.

41. On plain perusal of supra noted contents of Ex. P-8 Investigation Report Executive Engineer Sri. Madhavan, *it is vividly clear that*, DGOs-1 & 2 have arranged for making payment of Rs.18,30,418/- to the contractor merely on the basis of supply of *water meters* to CMC by taking stock of the said meters, even though, those were not fixed to the taps as per terms of contract and DGOs have violated the G.O. F D 56 PRO Cell 2004, Bengaluru dated 18/01/2005, by arranging *payment* without getting the *check measurement* of 25% work by the Executive Engineer.
42. *It is worth mentioning to note that*, on bare reading of Ex. P-1 to 15 coupled with deposition of PW-1, *it is very clear that*, DGOs-1 and 2 being then Commissioner and then Assistant Executive Engineer respectively in CMC, Sirsi, have committed dereliction of duty amounting to misconduct as mentioned in the common charge at para 6(2) of the report.
43. *On careful analysis and appreciation of oral and documentary evidence placed on record, it is manifestly clear that* the deposition of PW-1 is fully corroborated, consistent and strengthened by Ex. P-8



Investigation Report dated 06.06.2015 of Executive Engineer Sri. D.N. Madhavan and Ex P-1 to 7 and Ex. P-9 to 15 and admission of DGO-1, and the same are inspiring confidence of this enquiry authority to rely and to act upon and there is nothing brought on record to disbelieve the same. *In my considered view*, the case of Disciplinary Authority is *acceptable*.

44. *For the reasons stated above* and observations made in the light of deposition/s of Pw-1, DW-1 and Ex. P-1 to 15 and Ex. D-1 to 13 and admissions of DGO-1, and relevant provisions of law and under the given set of facts and circumstances of this enquiry, *I have arrived at inevitable conclusion to hold that* the Disciplinary Authority through its Presenting Officer is **successful** in proving the *common charge* framed and leveled against DGOs-1 and 2 *up to* the standard of preponderance of probabilities and to the satisfaction of this enquiry authority, to record my finding in the affirmative as *proved*.

45. COMMON POINT NO.2 : *In view* of my finding on common point No. 1, for foregoing reasons and discussions, I proceed to submit the common enquiry report as *under* :-



:: COMMON ENQUIRY - REPORT ::

- i. From the oral and documentary evidence and materials placed on record, I hold and record my finding that the Delinquent Government Official-1 in D.E. No. 500/2016 Sri. K.B. VEERAPURA, *Deputy Director* of Co-operative Department, Raichur District, (*the then Commissioner, City Municipal Council, Sirsi*) and DGO-2 in D.E. No. 721/2017 Sri. TEJAMURTHY, *the then Assistant Executive Engineer, City Municipal Council, Sirsi* have *failed* to maintain absolute integrity and devotion to duty and committed an act which is unbecoming of Government servants and they are *found guilty* of misconduct under Rule 3(1) of Karnataka Civil Service (Conduct) Rules, 1966.
- ii. *Accordingly*, I hold and record/assign my finding on common point No.1/ the common charge *viz:- para 6(2) of the report leveled by the disciplinary authority against DGOs 1 & 2 as proved.*



iii Hence, this Common Enquiry Report is submitted/placed before Hon'ble Upalokayukta-1 for kind *consideration.*

Dated 13th **March** 2019.

Md. 13/03/2019

(Master RKGMM Mahaswamiji)
Additional Registrar Enquiries-10
Karnataka Lokayukta
Bangalore.

Date : 13.03.2019

Place : Bangalore.

::ANNEXURE: :**I. LIST OF WITNESS/S EXAMINED ON BEHALF OF DISCIPLINARY AUTHORITY:**

PW-1 :- Sri. Kiran Narayana Prabhu (Complainant)

II. LIST OF DOCUMENTS MARKED/EXHIBITED ON BEHALF OF DISCIPLINARY AUTHORITY :

- Ex.P-1 : Form No. I (complaint) dated 05.06.2015
- Ex.P-2 : Form No. II (affidavit) dated 05.06.2015.
- Ex.P-3 : Complaint dated 05.06.2015.
- Ex.P-4 : Rejoinder of complainant dated 05.01.2016
- Ex P-5 : Rejoinder of complainant dated 29.10.2015.
- Ex.P-6 : Copy of order/letter dated 28.07.2015 passed by Director of Municipalities.
- Ex P 7 : Information/letter dated 23.06.2015 submitted by Project Director.
- Ex P 8 : Investigation Report dated 06.06.2015 submitted by Executive Engineer.
- Ex P 9 : Government Proceedings dated 18.01.2005.
- Ex P 10 : Government Circular dated 23.03.2007
- Ex.P-11 : Government Circular dated 04.01.2008.
- Ex.P-12 : Government Circular dated



20.01.2008.

- Ex.P-13 : Requisition/letter submitted to the Office of Deputy Commissioner dated 05.02.2014.
Ex.P-14 : Copy of Stock Receipts.
Ex.P-15 : Copy of attendance register.

III. LIST OF WITNESS/S EXAMINED ON BEHALF OF THE DGO-2/DEFENCE:

DW-1 : Sri. Tejamurthy
(Assistant Executive Engineer/DGO-2)

IV. LIST OF DOCUMENTS EXHIBITED/MARKED ON BEHALF OF DGO-2/DEFENCE:

- Ex. D-1 : Notarized copy of technical sanction dated 17.12.2010 (by Executive Engineer)
Ex. D-2 : Notarized copy of relevant pages of measurement book extract.
Ex.D-3 : Notarized copy of 2 bills.
Ex. D-4 : Notarized copy of office note.
Ex. D-5 : Notarized copy of relieve order dated 15.07.2013 (DGO-2).
Ex. D-6 : Notarized copy of reporting letter dated 17.07.2013 along with transfer order.
Ex. D-7 : Notarized copy of proceedings of Government of Karnataka dated 18.01.2005.
Ex. D-8 : Notarized copy of estimate.
Ex. D-9 : Notarized copy of detail of tender Schedule
Ex. D-10 : Notarized copy of agreement
Ex. D-11 : Notarized copy of work order



Ex. D-12 : Notarized copy of third party inspection report.

Ex.D-13 : Notarized copy of requisition of contractor Balachandra.

V. LIST OF WITNESS/S EXAMINED ON BEHALF OF THE DGO-2/DEFENCE:

- NIL -

VI. LIST OF DOCUMENTS EXHIBITED/MARKED ON BEHALF OF DGO-1/DEFENCE:

- NIL -

Md. 13/03/2019

(Master RKGMM Mahaswamiji)
Additional Registrar Enquiries-10
Karnataka Lokayukta
Bangalore.

Date : 13.03.2019
Place : Bangalore.