

**GOVERNMENT OF KARNATAKA**



**KARNATAKA LOKAYUKTA**

NO: LOK/INQ/14-A/59/2010/ARE-3

Multi Storied Building,  
Dr. B.R. Ambedkar Veedhi,  
Bengaluru-560 001  
Date: 02/04/2019

**RECOMMENDATION**

Sub:- Departmental inquiry against;  
Sri B.M. Venkatappa, Second Division Assistant,  
Directorate of Employees State Insurance Scheme  
(Medical) Services, Bengaluru - Reg.

Ref:- 1) Government Order No. ಕಾಇ 232 ಎಲ್‌ಎಸ್‌ಐ 2009,  
Bengaluru dated 22/10/2009.

2) Nomination order No.LOK/INQ/14-A/59/2010,  
Bengaluru dated 29/10/2010 of Upalokayukta-1,  
State of Karnataka, Bengaluru

3) Inquiry Report dated 30/3/2019 of Additional  
Registrar of Enquiries-3, Karnataka Lokayukta,  
Bengaluru

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The Government by its Order dated 22/10/2009, initiated the disciplinary proceedings against Sri B.M. Venkatappa, the then Second Division Assistant, Directorate of Employees State Insurance Scheme (Medical) Services, Bengaluru (hereinafter referred to as Delinquent Government Official, for short as DGO) and entrusted the Departmental Inquiry to this Institution.

2. This Institution by Nomination Order No. LOK/INQ/14-A/59/2010, Bengaluru dated 29/10/2010 nominated Additional Registrar of Enquiries-3, Karnataka Lokayukta, Bengaluru, as the Inquiry Officer to frame charges and to conduct Departmental Inquiry against DGO for the alleged charge of misconduct, said to have been committed by him.

3. The DGO Sri B.M. Venkatappa, the then Second Division Assistant, Directorate of Employees State Insurance Scheme (Medical) Services, Bengaluru was tried for the following charge:-

“That you DGO Sri B.M. Venkatappa, Second Division Assistant, Directorate of Employees State Insurance Scheme (Medical) Services, Bangalore while working as such when complainant Sri B.H. Krishnegowda, Superintendent of Security Force, Group 4S (India) Private Limited., Indiranagar, Bangalore (hereinafter referred to as complainant) approached you and requested for filing application, to issue the Botex Injection as per the instructions of Doctor, you demanded Rs.1,000/- bribe for issuing the said Botex Injection and on 04/10/2007 at about 2:45 p.m. at ESI Hospital, Rajajinagar, you DGO demanded and accepted illegal gratification of Rs.1,000/- from the Complainant, in the presence of shadow panch witness and thereby you failed to maintain absolute integrity, devotion to duty and also did an act of unbecoming of a Government Servant and thus you are guilty of misconduct as enumerated under Rule 3(1)(I) to (iii) of KCS (Conduct) Rules, 1966.”

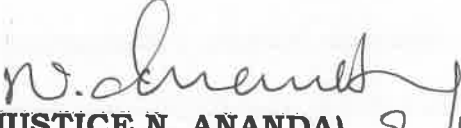
4. The Inquiry Officer (Additional Registrar of Enquiries-3) on proper appreciation of oral and documentary evidence has held that the Disciplinary Authority has proved the above charge framed against DGO Sri B.M. Venkatappa, the then Second Division Assistant, Directorate of Employees State Insurance Scheme (Medical) Services, Bengaluru.

5. 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.
6. The DGO Sri B.M. Venkatappa was tried in Spl. C.C. No. 116/2008 before the XXIII Additional City Civil & Sessions Judge & Special Court, Bengaluru City, and vide judgment dated 30/9/2014, the DGO was convicted for the offences under Section 7, 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988. The DGO was imposed with sentence of imprisonment and fine. The DGO had challenged the judgment of conviction dated 30/9/2014 passed in Spl. C.C. No. 116/2008 before the High Court of Karnataka, Bengaluru by filing Appeal in Crl. Appeal No. 861/2014 and the same is pending consideration.
7. As per the First Oral Statement submitted by DGO, he has retired from service on 30/4/2015 (during the pendency of inquiry).
8. Having regard to the nature of charge (demand and acceptance of bribe) proved against DGO Sri B.M. Venkatappa and conviction of DGO dated 30/9/2014 in Spl. C.C. No. 116/2008, it is hereby recommended to the Government for imposing penalty of permanently withholding 50% of pension payable to DGO Sri B.M. Venkatappa, the then Second Division Assistant, Directorate of Employees State Insurance Scheme (Medical) Services, Bengaluru, if the judgment of conviction of DGO dated 30/9/2014 in Spl. C.C. No. 116/2008 is set aside in the Criminal Appeal No. 861/2014. If the judgment of conviction of DGO dated 30/9/2014 is confirmed

in Criminal Appeal No. 861/2014, this recommendation shall be treated as redundant.

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

Connected records are enclosed herewith.

  
(JUSTICE N. ANANDA) 2/4  
Upalokayukta-1,  
State of Karnataka,  
Bengaluru

**KARNATAKA LOKAYUKTA**

No. LOK/INQ/14-A/59/2010/ARE-3

M.S.Building,  
Dr. B.R.Ambedkar Veedhi,  
Bengaluru - 560001.

Date: 30.3.2019

**Enquiry report**

Present: Sri.S. Renuka Prasad  
Additional Registrar Enquiries-3

Sub: Departmental Enquiry against Sri B.M. Venkatappa,  
Second Division Assistant, Directorate of Employees State  
Insurance Scheme (Medical) Services, Bengaluru - reg

Ref: 1. Report under Section 12(3) of the Karnataka  
Lokayukta Act, 1984, in No. Compt/Uplok/BCD/  
573/2008/DRE-5 dated 8.6.2009

2. Government order No. LD 232 LSI 2009 dated  
22.10.2009

3. Nomination Order No.LOK/INQ/14-A/59/2010  
dated 29.10.2010 of Hon'ble Upalokayukta,  
Karnataka State, Bengaluru.

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1. One Sri B.H. Krishnegowda, Superintendent of Security Force, Group 4 S(India) Pvt. Ltd., Indiranagar, Bengaluru (hereinafter referred to as 'complainant') has filed a complaint to Lokayukta police, Bengaluru on 4.10.2007 against Sri B.M. Venkatappa, Second Division Assistant, Directorate of Employees State Insurance Scheme (Medical) Services, Bengaluru, (hereinafter referred to as 'DGO' for short) making allegations against him that, DGO is demanding him to pay Rs. 1000/- by way of bribe in order to procure and supply injection Botox to the complainant as prescribed by Doctors at NIMHANS and to process the file pertaining to supply

of injection to the complainant and to obtain the orders of the Director to that effect.

2. On registering a case on the basis of the said complaint, a trap was held on 4.10.2007 in the O/o Director, Employees State Insurance Department, situated within the premises of ESI Hospital, Rajajingar, Bengaluru wherein, the DGO having demanded bribe from the complainant, received the said bribe amount of Rs. 1000/- from him. The tainted money of Rs. 1000/- was recovered from the right side pant pocket of the DGO, during the trap proceedings. Since it was revealed during investigation that, the DGO has demanded bribe of Rs.1000/- from the complainant and received the same, in order to do an official act i.e., in order to procure and supply injection Botox to the complainant as prescribed by Doctors at NIMHANS and to process the file pertaining to supply of injection to the complainant and to obtain the orders of the Director to that effect, the Police Inspector having conducted investigation filed charge sheet against the DGO.
3. The ADGP, Karnataka Lokayukta, Bengaluru has forwarded the copy of the charge sheet to the Hon'ble Upalokayukta. On the basis of the materials collected during investigation and materials placed before this authority, an investigation was taken up under Section 7(2) of the Karnataka Lokayukta Act. An observation note was served on the DGO providing him an opportunity to show-cause as to why recommendation should not be made to the Competent Authority, for initiating disciplinary proceedings against him. DGO has submitted his reply dated 28.1.2009 denying the allegations made against him contending that, he never demanded or received any money by way of bribe from the complainant and he has been falsely implicated. It is his contention that, he has received the

relevant file pertaining to the complainant on his table on 3.10.2007 after approval from the Director though he sent the file to the Director on 25.9.2007 itself. According to him, there was no delay on his part in processing the file. He has taken up a further contention that, on 4.10.2007 at about 2.00pm while he was going to the hotel to have tea, complainant also came along with him to the hotel and while having tea in the hotel, he/complainant enquired him about his work of supply of Botox injection and he/DGO claimed that, he asked the complainant to collect the sanction order from the dispensary and further told him that, necessary orders will be placed with the company to procure the said medicine/injection and soon after receipt of the medicine, the same will be supplied to him. It is the further contention of the DGO that, the complainant requesting him to procure the medicine early, kept the money in his right side pant pocket though he declined to receive that money from him but, the complainant forcibly kept the money in his pant pocket. It is his further contention that, though he on taking out the money kept by the complainant, from his right side pant pocket and tried to return that money to him, the complainant never allowed him to return the money to him and forced him to keep the money with him and by that time, Lokayukta police apprehended him and made allegations against him that, he has demanded and received Rs. 1000/- as bribe from the complainant and falsely prosecuted him. Taking up these contentions, DGO has requested this authority to drop the proceedings against him.

4. Since the explanation offered by the DGO was not satisfactory, a recommendation under Section 12(3) of the Karnataka Lokayukta Act was forwarded to the Competent Authority, recommending to initiate disciplinary enquiry against the DGO and to entrust the

enquiry under Rule 14-A of KCS (CCA) Rules, to this authority to hold enquiry. Accordingly, the Disciplinary Authority, Government of Karnataka in the Labour Department by its order in No. LD 232 LSI 2009 dated 22.10.2009 initiated disciplinary proceedings against the DGO and entrusted the same to Hon'ble Upalokayukta to hold enquiry. As per the order issued against the DGO, the Hon'ble Upalokayukta issued a nomination order dated 29.10.2010 nominating ARE-3 to frame charges and to conduct enquiry against the DGO. Accordingly, charges were framed by the then ARE-3 against the DGO as under.

“Charge:

That you DGO Sri.B.M.Venkatappa, Second Division Assistant, Directorate of Employees State Insurance Scheme (Medical) Services, Bangalore while working as such when complainant Sri.B.H.Krishnegowda, Superintendent of Security Force, Group 4 S (India) Pvt. Ltd., Indiranagar, Bangalore (hereinafter referred to as Complainant), approached you and requested by filing application, to issue the Botex injection as per the instructions of Doctor, you demanded Rs.1,000/- bribe for issuing the said Botex injection and on 04/10/2007 at about 2:45 p.m. at ESI Hospital, Rajajinagar, you DGO demanded and accepted illegal gratification of Rs. 1,000/- from the complainant, in the presence of shadow panch witness and thereby you failed to maintain absolute integrity, devotion to duty and also did an act of unbecoming of a Government Servant and thus you are guilty of misconduct as enumerated under Rule 3 (1) (i) to (iii) of KCS(Conduct) Rules 1966.

STATEMENT OF IMPUTATION OF MISCONDUCT:



The complainant Sri.B.H.Krishnegowda, Superintendent of Security Force, Group 4 S (India) Pvt. Ltd., Indiranagar, Bangalore filed complaint on 04/10/2007 alleging that, complainant met DGO Sri.B.M.Venkatappa, Second Division Assistant, Directorate of Employees State Insurance Scheme (Medical) Services, Bangalore and requested by filing application to issue the Botex injection as per the instructions of Doctor, for which DGO demanded Rs.1,000/- bribe to issue the Botex injection. As complainant was not willing to pay the bribe, he filed complaint before Police Inspector, Karnataka Lokayukta, Bangalore City Division on 04/10/2007. On the basis of the said complaint, Sri.Prasanna V. Raju, Police Inspector, Karnataka Lokayukta, Bangalore (hereinafter referred to as I.O.) registered a case in Cr. No. 35/2007 and submitted FIR to jurisdictional court.

After registering of the case, investigating officer followed all the pre-trap formalities and on the same day i.e., on 04/10/2007, the I.O. along with complainant, panchas and other staff of Lokayukta office reached near the 0/o Directorate of ESI Hospital situated at Rajajinagar. In the ESI Hospital of DGO, at about 2:45 p.m. DGO demanded and accepted bribe amount of Rs.1,000/- from the complainant, currency notes being smeared with phenolphthalein powder. Thereafter the DGO was apprehended and the amount which was received from the complainant was in the right side pant pocket of the DGO and the same was recovered. Hand wash tests were conducted, Mahazar was drawn in the spot. All the formalities of collecting the hand wash and sealing the bottles are completed. DGO also gave statement in

writing. The currency notes and the hand wash are seized under panchanama.

The materials collected by the I.O. during the course of investigation prima facie disclosed that, DGO demanded and accepted Rs.1,000/- bribe from the complainant for doing an official favour, thus DGO has failed to maintain absolute integrity, and this act on the part of DGO is unbecoming of a public servant, hence DGO has committed misconduct under Rule 3 (1) (i) to (iii) of KCS (Conduct) Rules 1966.

In this connection an observation note was sent to the DGO and the DGO has submitted his reply which was found after due consideration not acceptable. Therefore, recommendation was made to the Competent Authority under Section 12(3) of the Karnataka Lokayukta, Act 1984, to initiate Departmental Proceedings against the DGO. The Government after considering the recommendations made in the report, entrusted Hon'ble Upalokayukta to conduct departmental disciplinary proceedings against the DGO and to submit report. Hence the charge ."

5. The Articles of Charges and Statement of Imputations are duly served on the DGO. DGO has appeared before this authority and First Oral Statement of the DGO was recorded. DGO has denied the charges framed against him. He has engaged the services of an Advocate to appear on his behalf and to defend him, in the enquiry. At his request, time was granted to him so as to enable him to file his written statement.

6. But the DGO, instead of filing written statement, has approached the Hon'ble High Court of Karnataka by wiling W.P. No. 11015 of 2011 praying the Hon'ble High Court to stay the departmental enquiry initiated against him till the disposal of the prosecution case launched against him which is pending in Spl.C.C.No. 116/2008 before XXIII ACCJ and Spl. Court, Bengaluru. The Hon'ble High Court allowed the said Writ Petition and held that, the departmental action initiated against the DGO shall remain stayed during the pendency of the criminal prosecution against him. In view of this order passed by the Hon'ble High Court, this enquiry proceedings could not be proceeded with, against the DGO. Subsequently, the learned Spl Judge on holding detailed trial against the DGO in Spl.C.C. No. 116/2008, vide judgment dated 30.9.2014 proceeded to convict the accused holding him guilty of offence under Section 7,13(1)(d) R/w 13(2) of P.C Act, 1988 and imposed sentence of imprisonment and also to pay fine. Subsequent to the disposal of the prosecution case, this proceedings has been taken up to continue the enquiry against the DGO. Even thereafter, DGO never bothered to file his written statement despite granting him sufficient opportunity and hence it was considered that, the written statement of the DGO was not filed and the matter was taken up for enquiry.

7. During enquiry, 2 witnesses viz., complainant and Investigation officer have been examined as PW1 and PW2 and 13 documents came to be marked as Ex-P1 to Ex-P13 on behalf of the disciplinary authority. The shadow witness could not be examined in this enquiry since he is reported to be dead. After closure of the evidence on behalf of disciplinary authority, second oral statement of the DGO was recorded. Since, DGO desired to lead defence evidence, permission was granted to him accordingly. But subsequently, learned counsel for DGO filed a memo stating that, DGO has no

defence evidence to lead and DGO is not willing to examine himself in support of his defence. Hence DGO was examined under Rule 11(18) of KCS (CCA) Rules with reference to the questionnaire prepared.

8. Thereafter, the learned Presenting Officer has filed written arguments. At this stage, the counsel for the DGO on realizing that, written statement was not filed on behalf of the DGO, sought permission of this authority to file written statement. His prayer was considered, permitting the DGO to file his written statement at that concluding stage of the enquiry proceedings. Accordingly, written statement of the DGO came to be filed on 14.12.2018 and except denying each and every allegations made against him, he has not taken up any specific defence in his written statement. Thereafter, the learned counsel for DGO has submitted his oral arguments in detail. Having heard the arguments of the learned counsel for DGO, this matter is taken up for consideration.

9. The points that would arise for my consideration are:

**Point No.1:** Whether the charge framed against the DGO is proved by the Disciplinary Authority?

**Point No.2:** What order?

10. The above points are answered as under:

**Point No.1:** In the 'Affirmative'

**Point No.2:** As per Conclusion.

### **REASONS**

**Point No.1:-**

11. DGO was working as Second Division Assistant in the office of the Directorate of Employees State Insurance Department (Medical

Services), Bengaluru and his office is housed in the premises of ESI Hospital, Rajajinagar, Bengaluru.

12. The complainant in his complaint has narrated in detail the circumstances under which he has filed the said complaint against the DGO. According to him, he is a permanent employee working as Security Superintendent in M/S. Group 4 Security (India) Pvt. Ltd., Indiranagar, Bengaluru and he is covered under the ESI scheme having ESI No. 19926412. It is his further contention that, since he was suffering from some ailment with his right hand as he could not use and write with his right hand, he approached ESI Hospital, Basavanagudi for treatment. He was referred to NIMHANS for diagnosis of his ailment by a Neuro-Surgeon. Since he was diagnosed as suffering from a disease "Task Specific Distoria", he was advised to take injection BOTOX. Since the said injection was costly and he could not bear the expenses towards purchase of the said injection, he approached ESI hospital, Binnypete for providing him the said injection. The Medical officer, ESI Hospital, Binnypete sent a letter of requisition to Director of ESI for supply of the said injection free of cost, as the complainant is covered under ESI scheme. The file was under process in the office of the Director, for procuring the said injection and DGO being the case worker was processing the said file of the complainant. On coming to know that, the file was being processed by the DGO, the complainant approached the DGO and requested him to process his file and procure the injection early. It is the allegation of the complainant that, DGO has demanded him to pay Rs. 1000/- by way of bribe, in order to process the file and procure the required injection.

13. Since the complainant was not willing to pay any bribe to the DGO, in order to get his file processed for procuring the injection, he

approached Police Inspector, Karnataka Lokayukta, Bengaluru City Division on 4.10.2007 and filed a written complaint as per Ex-P1.

14. On the basis of the complaint so filed by the complainant on 4.10.2007 the Police Inspector, Karnataka Lokayukta, Bengaluru City Division, has registered a case in Cr. No. 35/2007 under Sections 7,13(1)(d) R/w 13(2) of P.C Act, 1988 and took up investigation.
15. An entrustment proceedings was conducted in the Lokayukta office, Bengaluru City Division on 4.10.2007 in the presence of two panch witnesses viz., Sri Venkata Deshik, SDA and Sri Satyaprasad, FDA from O/o Chief Engineer, Minor Irrigation Department, Bengaluru and in the said proceedings, the bait money of Rs. 1000/- consisting of 2 currency notes of Rs. 500/- denomination each, given by the Complainant, were smeared with phenolphthalein powder making it as tainted money, and the said tainted notes were entrusted to the Complainant asking him to give that money to the DGO when he meets him and only in case if the DGO demands for bribe. Panch witness Sri Venkata Deshik was sent along with the complainant, as a shadow witness. Accordingly, an entrustment mahazar was prepared as per Ex-P4.
16. The complainant and the shadow witness were taken to ESI Hospital premises, Rajajinagar, Bengaluru and sent them to meet the DGO in the office of the Director of ESI. The complainant accompanied with the shadow witness went inside the said office at about 2.30pm. Initially, the DGO was not in his seat and since he had been to have tea, the complainant and shadow witness were waiting for the DGO in the Reception. On arrival of the DGO the complainant met the DGO and introduced the shadow witness as his friend and enquired

him about supply of injection as per the recommendation made by Medical Officer, ESI Hospital, Binnypete. The DGO enquired him as to whether he has brought money as demanded. When the complainant gave the tainted notes of Rs. 1000/- to him, he/DGO on receiving it with his right hand kept that money in his right side pant pocket and asked the complainant to come after 2-3 days by that time, his injection will be procured. Thereafter, the complainant came out of the office and gave pre-arranged signal to the Police Inspector.

17. On receiving the signal, the Police Inspector and his staff and another panch witness approached the complainant and the complainant took them inside the office of the DGO and showed the DGO to the Police Inspector claiming that he is the concerned case worker, and he has received money from him.
18. The Police Inspector introduced himself to the DGO and explained to him about the registration of a case against him and asked him to co-operate in the investigation. DGO disclosed his name as Sri B.M. Venkatappa, Second Division Assistant, Directorate of Employees State Insurance Scheme (Medical) Services, Bengaluru.
19. Thereafter, the hand wash of DGO was obtained, asking him to wash his both hand fingers separately in two separate bowls containing sodium carbonate solution. When DGO washed his right hand fingers in one bowl and left hand fingers in another bowl containing sodium carbonate solution, the solution in which DGO dipped his right fingers turned into pink colour, whereas, the solution in which DGO dipped his left hand fingers, there was no change in the colour of the solution. Both right hand wash and left

hand wash of DGO were collected in two separate bottles and sealed the same.

20. Thereafter, the Police Inspector asked the DGO about the money he has received from the complainant. DGO having taken out the money he has received from the complainant, from his right side pant pocket, produced the same before the Police Inspector. On verification of those notes with reference to its serial numbers, it was confirmed that, those were the notes entrusted to the complainant during the entrustment proceedings. Those notes were kept in a separate cover and sealed the same.
21. On providing an alternate pant to DGO, pant worn by him was got removed and the right side pocket portion of the pant when dipped in a separate bowl containing sodium carbonate solution, the solution in the said bowl turned into pink colour. The pant pocket wash of DGO along with his pant were seized by collecting the pant pocket wash in a separate bottle. Even the hand wash of the complainant was obtained which gave positive result regarding presence of phenolphthalein thereby, it was confirmed that, the complainant handed over that money to the hands of DGO and even that solution was collected in a separate bottle and sealed the same.
22. The Police Inspector asked the DGO to give his explanation in writing. DGO gave his explanation in writing as per Ex-P7. Both the complainant and shadow witness have denied the correctness of the version of the explanation given by the DGO, claiming it as false and incorrect.
23. The Police Inspector asked the DGO to produce the relevant documents pertaining to the complainant and the request made by



him to supply injection as prescribed by the doctors of NIMHANS. The DGO has produced a file containing 14 pages pertaining to the subject of supply of injection to the complainant and the attested copies of those papers have been seized as Ex P5 and the extract of the attendance register was also seized as per Ex P6.

24. During enquiry, the complainant has been examined as PW1. Investigation officer has been examined as PW2. The shadow witness since dead could not be secured in this enquiry.
25. The complainant in his evidence has stated about the circumstances under which he has filed the complaint against the DGO as per Ex-P1. He has made a specific allegation against the DGO in his complaint, which he has reiterated while giving evidence before this authority contending that, the DGO is the concerned case worker in the O/o Director of ESI. It is his specific contention that, since the doctors at NIMHANS prescribed him injection BOTOX for his ailment and since the said injection was costly, he filed an application for procuring the said injection from Director of ESI since, he is a member of ESI scheme. The prescription given by doctors at NIMHANS was forwarded to the Director through Binnypete ESI Hospital and hence he approached the DGO to process the said application and to procure the injection at an earliest. It is his allegation that, the DGO made him to roam around to ESI Hospital, Rajajinagar for about 4 to 5 times and thereafter, asked him to give him Rs. 1000/- as bribe, telling him that, then only the required injection will be procured and will be supplied to him. The complainant has reiterated all these allegations even during his evidence before this authority explaining the circumstances which forced him to file complaint against the DGO as per Ex-P1.

26. He has further deposed about conducting of entrustment proceedings in the Lokayukta office, Bengaluru City Division and entrustment of tainted notes of Rs. 1000/- to him in the said proceedings. He further gave details of trap proceedings contending that, he accompanied with the shadow witness went to meet the DGO but DGO was not available in his seat as he was told that, he/DGO had been to lunch and hence he and the shadow witness were waiting for the DGO by sitting in the reception. He has further stated that, on arriving of the DGO, he met him and DGO took him and the panch witness to the section where he used to sit and work and when he/complainant asked about the injections to be procured and supplied to him, DGO enquired him regarding the money he has demanded and when the complainant gave tainted notes of Rs. 1000/- to him, DGO having received that money from him with his right hand, kept that money in the right side pocket of his pant. According to him the shadow witness Sri Venkatesh Deshik was also with him and has seen all these happenings regarding the manner in which DGO has demanded and received money from him, to attend his work.

27. He further narrated in detail about giving pre-arranged signal to the Police Inspector on coming out of the office, arrival of Police Inspector on receiving his signal, and he taking the Police Inspector and his staff inside the office of ESI and showing the DGO to him and the Police Inspector conducting the trap proceedings on the DGO and the details of the trap proceedings. He further narrated about obtaining the hand wash of both the hands of the DGO in which right hand wash of DGO gave positive result and left hand wash of DGO gave negative result regarding presence of phenolphthalein, recovery of tainted notes of Rs. 1000/- from the pant pocket of the DGO since DGO himself on enquiry by the Police

Inspector, took out the tainted notes from his right side pant pocket and produced the same before the Police Inspector which was verified and confirmed that, those were the notes entrusted to him/PW1 during the entrustment proceedings, subjecting the pocket portion of the pant of the DGO to phenolphthalein test which gave positive result regarding presence of phenolphthalein, seizure of the pant of the DGO, giving of explanation by the DGO as per Ex-P7, production of the relevant documents pertaining to the application filed by him/PW1, the seizure of those documents in the file produced by the DGO as per Ex-P5 and other details of the trap proceedings.

28. The complainant has been thoroughly cross examined by the learned counsel for DGO. Various suggestions were put to him regarding the prescription of the said injection by NIMHANS doctor and he/complainant making application to Binnypete ESI Dispensary with regard to requirement of the injection prescribed by the Doctor at NIMHANS and his application was forwarded by the Medical Officer, Binnypete ESI Dispensary, to the office of the Director of ESI, for procuring and supplying injection to him/complainant.
29. A specific suggestion was put to the complainant during his cross examination that, on that day DGO returned to the office after having his lunch and he/complainant himself took the DGO again and took him to ESI canteen and they both had coffee in the said canteen and while DGO was smoking cigarette, he/complainant kept the money in the right side pant pocket of the DGO. This suggestion has been categorically denied by the complainant. A further suggestion was put to him that, after arrival of Police Inspector, he/complainant told the Police Inspector about

availability of money in the right side pant pocket of the DGO since he himself kept the money in the pant pocket of the DGO. Even this suggestion has been denied by the complainant. The complainant has admitted when a suggestion was put to him stating that, when the Police Inspector apprehended the DGO, DGO started shouting that he never voluntarily received any money but the money was kept in his pant pocket forcibly. The complainant gave positive reply to this suggestion put to him, during his cross examination.

30. The complainant was again recalled at the instance of the learned counsel for DGO and he was subjected to further cross examination regarding his inability to write complaint due to the ailment he was suffering to his right hand. The complainant claimed that, the complaint Ex-P1 and the application filed by him addressed to the Director, ESI Corporation as per Ex-P5(1) have been prepared by him in his own hand writing as he could write by using his left hand. He further admitted that, DGO informed him that, there was no stock of injection BOTOX in the stores but, denied the suggestion put to him that, DGO told him that the injection BOTOX was to be procured from outside. A further suggestion was put to him that, he and the Director have connived together to falsely implicate the DGO and hence he filed false complaint against him/DGO, and even the said suggestion has been categorically denied by the complainant.
31. PW2 is the IO who gave evidence in detail regarding the various stages of investigation he has conducted, right from the registration of a case against DGO on the basis of the complaint filed by the complainant as per Ex-P1 and took up investigation. He narrated in detail regarding conducting of entrustment proceedings and entrustment of tainted notes of Rs.1000/- to the complainant, in the said proceedings.

32. He further gave details regarding the trap proceedings he has conducted in the O/o Director of ESI, Rajajinagar, Bengaluru stating that, he sent both the complainant and the shadow witness, to meet the DGO in the said office and on receiving signal from the complainant, he claimed that, he and his staff on approaching the complainant, he took them inside the office and showed DGO claiming that, he is the concerned clerk/case worker and he has received money from him.

33. He further stated about obtaining of hand wash of both the hands of DGO and right hand wash of DGO gave positive result regarding presence of phenolphthalein powder but left hand wash of DGO gave negative result as there was no change in the colour of the solution. He further stated that, when he asked DGO about the money he has received from the complainant, DGO himself took out the money from his right side pant pocket and produced the same before him/PW2 and on confirming that, those were the notes of Rs. 1000/- entrusted to the complainant, seized those notes. He further stated about subjecting the right side pocket portion of the pant of DGO to phenolphthalein test which gave positive result regarding presence of phenolphthalein. He also stated that, when he asked the DGO to produce the relevant documents pertaining to the complainant, and the application made by him to supply injection as prescribed by the doctors of NIMHANS, DGO has produced a file containing 14 pages and the attested copies of those papers have been seized as per Ex P5 and he also seized the extract of the attendance register as per Ex P6.

34. He also gave evidence regarding giving of written explanation by DGO as per Ex-P7 and the complainant shadow witness having gone

through Ex-P7 denied the correctness of the version of the explanation given by DGO claiming it as false and incorrect. He gave details regarding preparation of mahazar as per Ex-P9 and other details of trap proceedings he has conducted.

35. He further gave details regarding the investigation he has conducted including preparing rough sketch of scene of occurrence as per Ex-P11 and sending of seized articles to FSL for chemical examination and receipt of report of chemical examiner as per Ex-P12 and securing the service particulars of DGO as per Ex-P13 and other details of the investigation he has conducted.

36. The learned counsel for DGO has cross examined him at length by putting various suggestions to him. All those suggestions have been suitably replied by PW2 during his cross examination. A suggestion was put to him that, as per the entries in the records seized, the Director had already passed orders permitting for releasing the injection to the complainant as per the order dated 29.9.2007. PW2 has admitted this fact confirming the orders of the Director dated 29.9.2007 sanctioning the required injection to the complainant. A question was put to him as to whether he made enquiries in the stores regarding availability of injection BOTOX, but PW2 has stated that he never made any such enquiries regarding availability of injection in the stores or whether it has to be procured from outside. On perusing the detailed cross examination of PW2, nothing is elicited in his cross examination, to disbelieve the evidence of PW2.

37. DGO has not filed his written statement at the earlier stages of this enquiry but after conclusion of the enquiry and before addressing arguments, the written statement on behalf of the DGO came to be filed on 14.12.2018. DGO has not taken any specific defence in his

written statement and his defence is one of total denial. He claimed that, he is not the authority to sanction the required injection to the complainant and hence question of he demanding and accepting bribe from the complainant does not arise. He has reiterated his contention that, he never demanded or accepted any bribe from the complainant and he has been falsely implicated.

38. Even while recording his statement under Rule 11(18) of KCS(CCA) Rules, he has not taken up any specific defence except denying the allegations made against him contending that, he never demanded or received any bribe from the complainant and whatever the work he was to attend in respect of the application filed by the complainant, he has attended his part of the work. He has submitted as follows:

“ ನಾನು ಅವರಲ್ಲಿ ಯಾವುದೇ ಲಂಚದ ಬೇಡಿಕೆ ಇಟ್ಟಿಲ್ಲ. ಅವರಿಗೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಕೆಲಸ ನನ್ನ ಹಂತದಲ್ಲಿ ಏನಾಗ ಬೇಕೆತ್ತೋ ಆ ಕೆಲಸ ನಾನು ಮಾಡಿ ಮುಗಿಸಿದ್ದೇನೆ. ನಾನು ಆ ಕಾಲದಲ್ಲಿ ಬರೀ ಟಪಾಲು ನಿರ್ವಹಣೆ ಮಾಡುತ್ತಿದ್ದೆ. ಟಪಾಲಿನಲ್ಲಿ ಬಂದ ಕಾಗದ ಪತ್ರಗಳನ್ನು ಸಂಬಂಧಿಸಿದ ಅಧಿಕಾರಿಗಳ ಮುಂದೆ ಮಂಡಿಸುತ್ತಿದ್ದೆ. Sanctioning authority, order issuing authority ಬೇರೆ ಅಧಿಕಾರಿಗಳಿಗೆ ಸಂಬಂಧ ಪಟ್ಟಿದ್ದು, ನನಗೂ ಅದಕ್ಕೂ ಸಂಬಂಧವಿಲ್ಲ.”

39. DGO though desired to lead defence evidence by examining himself, while recording his second oral statement, subsequently he desist himself from examining himself and his advocate filed a memo stating that, DGO has no evidence to lead on his behalf. Hence DGO has been questioned under Rule 11(18) of KCS(CCA) Rules with reference to questionnaire prepared. Hence, in the absence of any specific defence taken by the DGO and in view of his total denial of the allegations made against him, it has be decided whether, the

evidence and materials made available by the disciplinary authority during the enquiry are sufficient to conclude that, the charges against the DGO are proved or not.

40. DGO in response to the observation note served on him, furnished his reply dated 28.1.09 wherein, he has taken up a specific contention that, the complainant himself kept the money in his pant pocket, though he never demanded for any money. The relevant portion of the defence contention taken by him in his reply reads as follows:

“ ದಿನಾಂಕ 4.10.2007 ರಂದು ಗುರುವಾರ ಮಧ್ಯಾಹ್ನ ಊಟದ ಸಮಯದಲ್ಲಿ ನಾನು 1-45ಕ್ಕೆ ಊಟ ಮುಗಿಸಿ 2-00 ಗಂಟೆಗೆ ಟೀ ಕುಡಿದು ಬರೋಣ ಎಂದು ಕೆಳಗೆ ಇಳಿದು ಹೋಟೆಲ್‌ಗೆ ಹೊರಟಿದ್ದೆ. ಕೆಳಗೆ ಸ್ವಾಗತಕಾರರ ಎದುರು ಸೋಫಾದಲ್ಲಿ ಫಿರ್ಯಾದುದಾರರು ಮತ್ತು ಇನ್ನೊಬ್ಬರು ಕುಳಿತಿದ್ದರು ಫಿರ್ಯಾದುದಾರರು ನನ್ನನ್ನು ನೋಡಿ ನಮಸ್ಕಾರ ಮಾಡಿದರು ನಾನು ಸಹ ನಮಸ್ಕಾರ ಮಾಡಿ ಯಾವಾಗ ಬಂದಿರಿ ಎಂದು ವಿಚಾರಿಸಿದೆ. ಅವರಿಗೆ ಒಂದು ನಿಮಿಷ ಇರಿ ಎಂದು ಹೇಳಿ ನಾನು ಹೋಟೆಲ್‌ಗೆ ಹೋಗಿ ಟೀ ಕುಡಿದು ಬರುತ್ತೇನೆ ಎಂದು ಹೇಳಿ ಹೊರಟಾಗ ಅವರು ನಮ್ಮ ಜೊತೆ ನಾವು ಬರುತ್ತೇವೆ ಎಂದು ಬಂದರು. ಹೋಗುವಾಗ ಅವರ ಜೊತೆಯಲ್ಲಿದ್ದವರನ್ನು ಇವರು ನನ್ನ ಸ್ನೇಹಿತರು ನಮ್ಮ ಜೊತೆಯಲ್ಲಿ ಕೆಲಸ ಮಾಡುತ್ತಿರುತ್ತಾರೆ ಎಂದು ಪರಿಚಯಿಸಿದರು ನಂತರ ನಾವು ನಮ್ಮ ಆಸ್ಪತ್ರೆಯ ಹೊರಭಾಗದಲ್ಲಿರುವ ಕಪಿಲ ಸಾಗರ ಹೋಟೆಲ್‌ಗೆ ಹೋಗಿ ನಾನು ಮತ್ತು ಅವರಿಬ್ಬರು ಕಾಫಿ ಕುಡಿಯುತ್ತಿರುವಾಗ ಫಿರ್ಯಾದುದಾರರು ಸಾರ್ ನನ್ನ ಫೈಲ್ ಏನಾಯಿತು ಎಂದು ಕೇಳಿದರು. ಅದಕ್ಕೆ ನಾನು ರೆಡಿಯಾಗಿದೆ ಡಿಸ್ಪೆನ್ಸರಿಗೆ ಕಳುಹಿಸುತ್ತೇನೆ ನೀವು ಇನ್ನು ಡಿಸ್ಪೆನ್ಸರಿಯಲ್ಲಿ ಮಂಜೂರಾತಿ ಕಾಪಿಯನ್ನು ತೆಗೆದುಕೊಳ್ಳಿ, ಈಗ ಕಂಪನಿಗೆ ಆರ್ಡರ್ ಹಾಕಿ ತರಿಸಿಕೊಡುತ್ತೇವೆ ಎಂದು ಹೇಳಿದಕ್ಕೆ ಬೇಗ ತರಿಸಿಕೊಡಿ ಸಾರ್ ಎಂದು ಫಿರ್ಯಾದುದಾರರು ನನ್ನ ಪ್ಯಾಂಟಿನ ಜೇಬಿನಲ್ಲಿ ಹಣವನ್ನು ಇಟ್ಟರು ನಾನು ಬೇಡವೆಂದು ಪ್ಯಾಂಟಿನ ಜೇಬಿನಿಂದ ಹಣವನ್ನು ವಾಪಸ್ಸು ಕೊಡಲು ಹೋದಾಗ ಪರವಾಗಿಲ್ಲ ಇಟ್ಟುಕೊಳ್ಳಿ ಸಾರ್ ಎಂದು ತಡೆದರು. ನಾನು ಪುನಃ ಹಣಬೇಡವೆಂದು ಒತ್ತಾಯಿಸಿ ಅವರ ಜೇಬಿನಲ್ಲಿ ಇಡಲು ಹೋದೆ ಅದಕ್ಕೆ ಅವರು ತೆಗೆದುಕೊಳ್ಳಲಿಲ್ಲ ಈ ಬಗ್ಗೆ 5 ನಿಮಿಷಗಳ ಕಾಲ ನಮ್ಮ ಮತ್ತು ಅವರ ಮಧ್ಯೆ ವಾದಗಳು ಜರುಗಿದವು ಕೊನೆಗೂ ಅವರು ತೆಗೆದುಕೊಳ್ಳದೆ ಪುನಃ ಹಣವನ್ನು ನನ್ನ ಜೇಬಿನಲ್ಲೇ ಇಟ್ಟರು. ನಂತರ ನಾನು ಸಿಗರೇಟ್ ತೆಗೆದುಕೊಂಡು ಬರುತ್ತೇನೆ ಎಂದು ಆಸ್ಪತ್ರೆಯ ಗೇಟಿನ ಬಳಿ ಇರುವ ಗಾಡಿಯಲ್ಲಿ ಸಿಗರೇಟ್



ತೆಗೆದುಕೊಳ್ಳಲು ಹೋದಾಗ ಇಬ್ಬರು ವ್ಯಕ್ತಿಗಳು ಬಂದು ನನ್ನ ಎರಡು ಕೈಗಳನ್ನು ಹಿಡಿದುಕೊಂಡು ನಾವು ಲೋಕಾಯುಕ್ತ ಪೊಲೀಸರು ಎಂದು ತಿಳಿಸಿ ಅಲ್ಲಿಂದ ಆಫೀಸಿಗೆ ಕರೆದುಕೊಂಡು ಬಂದು ತಮ್ಮ ಕಾರ್ಯಾಚರಣೆಯ ನಡೆಸಿರುತ್ತಾರೆ. ನಾನು ಬೇಡವೆಂದು ಫಿರಿಯಾದಾರರಿಗೆ ಹಣವನ್ನು ವಾಪಸ್ಸು ಕೊಡಲು ಹೋದಾಫ ನನ್ನ ಕೈಗೆ ಬಣ್ಣ ರಹಿತವಾದ ದ್ರಾವಣ ಉಂಟಾಗಿರುತ್ತದೆ.”

41. The fact of giving of his explanation in writing during the trap proceedings as per Ex-P7 is not disputed by the DGO during enquiry. The relevant portion of his explanation reads as follows:

“ ಶ್ರೀ ಜೆ.ಹೆಚ್ ಕೃಷ್ಣಗೌಡ ಇವರು ಇಂಜೆಕ್ಷನ್ BOTOX ಚುಚ್ಚುಮದ್ದುಗಳ ಸರಬರಾಜು ಕೋರಿ ಮನವಿ ಸಲ್ಲಿಸಿದ್ದು, ಸದರು ಚುಚ್ಚು ಮದ್ದುಗಳು ಸದ್ಯಕ್ಕೆ ದಾಸ್ತಾನಿರುವುದಿಲ್ಲವಾದ್ದರಿಂದ ಸ್ವಲ್ಪ ವಿಳಂಬವಾಗುವುದಾಗಿ ತಿಳಿಸಿರುತ್ತೇನೆ. ಸದರಿ ಆರೋಪಿಯು ನೀಡಿರುವ ದಾಖಲಾತಿಗಳ ಅನ್ವಯ ಇವರಿಗೆ ಚುಚ್ಚು ಮದ್ದುಗಳ ವಿತರಣೆಗಾಗಿ ಮಂಜೂರಾತಿ ಆದೇಶವನ್ನು ಸಿದ್ಧಪಡಿಸಲಾಗಿದೆ.

ಸದರಿ ಚುಚ್ಚು ಮದ್ದುಗಳು ದಾಸ್ತಾನಿಲ್ಲವಾದ್ದರಿಂದ ಸದರಿ ವ್ಯಕ್ತಿಯು ಬೇಗ ತರಿಸಿ ಕೊಡಿ ಎಂದು ಬೇಡಿಕೊಂಡು ಒತ್ತಾಯಪೂರ್ವಕವಾಗಿ ಅವರೇ ಹಣ ನೀಡಿರುತ್ತಾರೆ. ಅವರು ನೀಡಿದಂತೆ ಹಣ ಎಷ್ಟು ಇದೆ ಎಂದು ಸಹ ನಾನು ನೋಡಲಿಲ್ಲ ಅದೇ ವೇಳೆ ತಮ್ಮ ಅಧಿಕಾರಿಗಳು ನನ್ನನ್ನು ವಶಕ್ಕೆ ತೆಗೆದುಕೊಂಡು ನಂತರ ನೋಡಿದಾಗ 1000/- (ಒಂದು ಸಾವಿರ) ರೂಗಳಿರುತ್ತದೆ. ಈ ಬಗ್ಗೆ ತಮ್ಮಲ್ಲಿ ಮನವಿ ಮಾಡಿಕೊಳ್ಳುವುದೇನೆಂದರೆ, ನಾನು ಆರೋಪಿಯಲ್ಲಿ ಚುಚ್ಚು ಮದ್ದುಗಳು ಬರುವುದು ವಿಳಂಬವಾಗುತ್ತದೆ ಎಂದು ಹೇಳಿದ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಫಿರಿಯಾದಿಯು ಈ ರೀತಿಯಾಗಿ ನನ್ನನ್ನು ತಪ್ಪಿಗೆ ಗುರಿ ಪಡಿಸಿರುವ ರೆಂದು ಈ ಮೂಲಕ ತಮ್ಮಲ್ಲಿ ಮನವಿ ಮಾಡಿಕೊಳ್ಳುತ್ತೇನೆ.”

42. In his written explanation though he has claimed that, since the complainant forcibly gave him money, he received it and without verifying how much amount is there, he kept it in his pant pocket. But in his reply to observation note, he has stated that, the complainant has forcibly thrust money in the right side pocket of his pant, thereby taken up contradictory contention in his reply to

observation note. But the DGO has intentionally avoided in examining himself before this authority and declined to enter into the witness box to adduce his defence evidence, probably in order to avoid answering the questions that may be put to him during his cross examination regarding such a contradictory defence contention taken by him in his written explanation, Ex-P7 and in his reply furnished to observation note.

43. The complainant has stated in detail regarding the allegations he has made against the DGO that, he has demanded Rs. 1000/- from him to obtain orders from the Director for supply of the required injection. During the cross examination of the complainant a contention was taken on behalf of the DGO that, injection BOTOX was not available in the stores and hence it was to be procured from outside. But on perusing the seized records as per Ex-P5, the office note is available at page no. 105 and at para no.3 there is a clear mention that, the injection BOTOX as prescribed by the Doctor to the complainant, is available in the Central Stores and the same may be supplied through the Branch stores. Therefore, the injection prescribed by the complainant was very much available in the Central stores of ESI Hospital and hence question of procuring that injection from outside, does not arise.

44. Further as per the seized records, the official Memorandum letter dated 27.9.2007 was kept ready in the file wherein, sanction was accorded for disbursement of the injection from the Central Stores through the branch stores. Therefore, though this letter dated 27.9.2007 at page no. 92 of Ex-P5 was ready for dispatch, DGO has intentionally retained this letter with him and never bothered to issue this letter to the complainant on 4.10.2007 when he received the bribe amount from the complainant. The entire file as per Ex-P5

was seized from the possession of DGO, since DGO himself produced this file, and since the letter of sanction dated 27.9.2007 was also in the said file seized on the day of trap, the DGO was aware of this letter kept ready in the file. The intentional retention of this letter with him by the DGO without handing it over to the complainant on 4.10.2007 is also an another factor which persuaded me to believe the evidence adduced in this enquiry in order to conclude that, the disciplinary authority was able to establish the charges against the DGO as he having demanded bribe from the complainant received Rs. 1000/- by way of bribe on 4.10.2007 in order to do an official act of supplying the required injection to the complainant from the stores on obtaining the orders of the Director.

45. Further the XXIII Additional City Civil and Session Judge and Special Court, Bengaluru City Division, on holding detailed trial in Spl.C.C. No. 116/2008, proceeded to convict the DGO/accused vide judgment dated 30.9.2014 holding him guilty of offence under Section, 7,13(1)(d) R/w 13(2) of P.C Act, 1988, and proceeded to impose him sentence of imprisonment and fine. Aggrieved by the said judgment of conviction passed against him by the trial court, DGO has preferred appeal before the Hon'ble High Court of Karnataka, Bengaluru Bench and the appeal so filed in Cr.A. no. 861/2014 is pending consideration before the Hon'ble High Court. Therefore, this is also an another factor which persuaded me to disbelieve the defence contention of the DGO and on considering the evidence adduced on behalf of the disciplinary authority both oral and documentary, I have no hesitation to conclude that, the charges against DGO has been established and thus proved by the disciplinary authority. Accordingly, I answer point no.1 in the affirmative.

**Point No.2**

46. Having regard to the discussion made above, and in view of my findings on point no.1 as above, my conclusion is as follows:

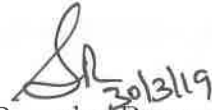
**CONCLUSION**

i) The Disciplinary Authority has proved the charge as framed against the DGO Sri B.M. Venkatappa, the then Second Division Assistant, Directorate of Employees State Insurance Scheme (Medical) Services, Bengaluru .

ii) As per the service particulars, Ex-P13, the date of birth of the DGO is 5.4.1955 and he has already retired from service on 30.4.2015.

iii) The XXIII Additional City Civil and Sessions Judge and Special Court, Bengaluru City Division vide judgment dated 30.9.2014 in Spl.KLA. C.C. No. 116/2008 convicted the DGO/accused holding him guilty of offence under Section 7,13(1)(d) R/w. Section 13(2) of P.C. Act and convicted him imposing sentence of imprisonment and fine.

iv) DGO has challenged the said judgment of conviction and sentence by preferring appeal before the Hon'ble High Court of Karnataka, Bengaluru Bench and the appeal so filed in Cr.A.No. 861/2014, is still pending consideration.



(S. Renuka Prasad)

Additional Registrar of Enquiries-3  
Karnataka Lokayukta, Bengaluru.

**ANNEXURES****I. Witnesses examined on behalf of the Disciplinary Authority:**

<b>PW-1</b>	Sri G.H. Krishnegowda (complainant) (original)
<b>PW-2</b>	Sri Prasanna V. Raju (Investigation officer) (original)

**II. Witnesses examined on behalf of the DGO: Nil****III Documents marked on behalf of D.A.**

<b>Ex.P-1</b>	Certified copy of the complaint
<b>Ex.P-2</b>	Certified copy of the sheet containing serial numbers of currency notes
<b>Ex.P-3</b>	Photographs (certified copy)
<b>Ex.P-4</b>	Certified copy of entrustment mahazar
<b>Ex.P-5</b>	Certified copy of records seized by IO
<b>Ex.P-6</b>	Certified copy of extract of attendance register
<b>Ex.P-7</b>	Certified copy of written explanation of DGO
<b>Ex.P-8</b>	Photographs
<b>Ex.P-9</b>	Certified copy of trap proceedings
<b>Ex.P-10</b>	Certified copy of FIR
<b>Ex.P-11</b>	Certified copy of rough sketch of scene of occurrence
<b>Ex.P-12</b>	Certified copy of FSL report
<b>Ex.P-13</b>	Certified copy of service particulars of DGO

**IV. Documents marked on behalf of DGO: Nil****V. Material Objects marked on behalf of the D.A: Nil**

  
(S. Renuka Prasad)

Additional Registrar of Enquiries-3,  
Karnataka Lokayukta, Bengaluru.

