

KARNATAKA - LOKAYUKTA

No. Uplok-1/DE/598/2017/ARE-12

M.S. Building
Dr. B.R. Ambedkar Road
Bengaluru-560 001
Date: 09.02.2021**ENQUIRY REPORT**

PRESENT : SRI D. PUTTASWAMY
ADDITIONAL REGISTRAR (ENQUIRIES)-12
M.S. BUILDING
KARNATAKA LOKAYUKTA
BENGALURU – 560 001.

Subject : Departmental Inquiry against :

Sri. Madhu, Assistant Executive Engineer,
Kempegowdanagar Sub-division, Bruhath
Bengaluru Mahanagara Palike, Bengaluru
-reg.,

- References:**
1. Report u/s 12(3) of the Karnataka Lokayukta Act, 1984 in Compt/Uplok/BCD/4245/2014/ARE-5, dt.03.02.2017.
 2. Government Order No. ಸಅಇ 108 ಎಂಎನ್ಯು 2017 dt:09.03.2017.
 3. Nomination Order No.Uplok-1/DE/598/2017 Bengaluru dt.26.04.2017 of Hon'ble Upalokayukta-1.
 4. Order No.Uplok-1&2/DE/Transfers/2018 Bengaluru dated 6.8.2018

* * *

1. This complaint is filed by the complainant Sri. Vasanth Kumar N, S/o. Late Narasimhaiah, Rajajinagar, Bengaluru District (hereinafter referred to as 'complainant' for short) against (1) Sri. Santhosh Kumar,

Assistant Engineer, Ward No.119, Kempegowda Nagara Sub-Division, Bruhath Bengaluru Mahanagara Palike, Bengaluru and (2) Sri. Madhu, Assistant Executive Engineer, Kempegowda Nagara Sub-Division, Bruhath Bengaluru Mahanagara Palike, Bengaluru (Sl. No. 2 is hereinafter referred to as Delinquent Government Official in short DGO) alleging misconduct.

2. On the basis of the complaint, comments were called from the DGO. The DGO has submitted his comments denying the complaint allegations. Unsatisfied with the comments of DGO, a 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.) authorizing Hon'ble Upa-lokayukta to hold an enquiry against the DGO as per reference No. 2.

3. On the basis of the Government Order, nomination order was issued by the Hon'ble Upalokayukta on 26/04/2017 authorizing ARE-3 to frame Articles of Charge against the DGO and to hold an enquiry to find out truth and to submit a report as per reference No. 3. On the basis of the nomination order, the Articles of Charge against the DGO were framed by the then Additional Registrar (Enquiries-3) and was sent to the Delinquent Government Official on 19/08/2017. In view

of the order cited at reference No. 4, this file was transferred from ARE-3 to ARE-12.

4. The articles of charge and the statement of imputations of misconduct prepared and leveled against the DGO are reproduced as here under :-

ANNEXURE-I
CHARGE

You, the DGO named above while working as Assistant Executive Engineer in the BBMP ward no. 119, Kempegowda nagara Sub-Division, BBMP, Bengaluru has shown negligent attitude in discharging your public duties and with regard to an unauthorized construction being undertaken by the owner of the property bearing no. 15/1 of Cholaragalli of Chickpet Cross Bengaluru and unauthorized construction being undertaken by the joint owners of the property bearing no. 29 and 29/1 of Sunakalpet Bengaluru, though they are constructing buildings in their respective properties as against the sanctioned plan and without leaving setbacks and deliberately violating building byelaws, a provisional order under Section 321(1) of KMC Act was issued to them on 9.12.2014 and confirmation order was served on them on 8.1.2015, but no further action was taken against the said owners, in demolishing the unauthorized portion of such construction and never bothered to initiate any further action in stopping the said unauthorised constructions and deliberately facilitated them to continue their unauthorized construction and to complete such unauthorized constructions, without proceeding against them in demolishing the structure under construction and failed to take any further action in terms of provisions of KMC Act, till your transfer on 13.1.2016 probably for extraneous consideration, thereby acted in a manner

unbecoming of a Government servant and failed to maintain absolute integrity, exhibited negligence in discharging your public duty and lack of devotion to duty and committed an act of misconduct under Rule 3(1)(i) to (iii) of KCS (Conduct) Rules 1966.

ANNEXURE-II
STATEMENT OF IMPUTATION OF MISCONDUCT:

On the basis of complaint filed by Sri.Vasanth Kumar N, S/o. Late Narasimhaiah, No.278, No.486, 'Yadava Nilaya', 15th Main, Manjunatha Nagar, West of Chord Road, 3rd Cross, 1st Block, 3rd Cross, Rajajinagar, Bangalore (hereinafter referred to as 'complainant' for short) against Sri.Madhu, Asst. Executive Engineer, Kempegowda Nagara Sub-Division, Bruhath Bangalore Mahanagara Palike, Bangalore (hereinafter referred to as DGO) alleging misconduct, an investigation was taken up after invoking Section 9 of Karnataka Lokayukta Act, 1984.

2. According to the Complainant:

Owner of property No.51/1, Cholaragalli, Cubbanpet Cross, Bangalore and property No.29 and 29/1, Sunakallupet are constructing building unauthorisedly and DGO is not taking action. DGO failed to furnish information also under RTI Act in respect of said properties.

4. DGO has submitted comments stating that provisional order was issued to the owner of property No.15/1 Cholaragalli and confirmation order was issued on 8.1.2015 and he was transferred from the Sub. Divn on 13.1.2016.

5. Present AEE was called upon to state action taken about unauthorised construction. He has submitted reply that there is no progress after issuing confirmation order and he took charge on 4.8.2016. After verifying the records he has written letter to the AEE to issue order u/s 462 of KMC Act

and action will be taken after receiving order u/s 462 of KMC Act.

6. Provisional order has been issued on 9.12.2014. Confirmation order has been issued on 8.1.2015. Thereafter no action has been taken by DGO for more than one year though he had worked in the same division up to 13.1.2016. Therefore this inaction on the part of DGO amount to dereliction of duty.

7. Since the said facts and materials on record prima facie show that DGO - Sri.Madhu, Asst. Executive Engineer, Kempegowda Nagara Sub-Division, Bruhath Bangalore Mahanagara Palike, Bangalore has committed misconduct under Rule 3(1) of KCS (Conduct) Rules, 1966 recommendation is made under section 12(3) of Karnataka Lokayukta Act, 1984 to the Competent Authority to initiate disciplinary proceedings against DGO - Sri.Madhu, Asst. Executive Engineer and to entrust the inquiry to this Authority under Rule 14-A of Karnataka Civil Service (Classifications, control and Appeal) Rules, 1957.

6. The Government after considering the recommendation made in the report, entrusted the matter to the Hon'ble Upalokayukta to conduct departmental/disciplinary proceedings against the DGO and to submit report. Hence the charge.

5. The aforesaid articles of charge were served upon the DGO on 10.10.2017 and DGO appeared before this enquiry authority and his first oral statement under Rule 11(9) of KCS (CCA) Rules, 1957 was recorded. The DGO pleaded not guilty and claimed to be enquired about the charge. DGO has filed his written statement of defence.

6. DGO in his written statement has contended that the Assistant Engineer after reporting about unauthorized construction, he has passed the provisional order on 09.12.2014 and confirmation order dt: 08.01.2015 and then he was transferred on 13.01.2016. He has learnt that the AEE, who has reported for duty on 04.08.2016 has sought for an order u/S 462, but they have not taken any action. Prima facie it appears that the investigation in the matter is incomplete. Therefore, the allegations made against him are not true and not applicable.

7. In this enquiry, to establish the charge against the DGO, the Presenting Officer has examined Sri. Vasanth Kumar (Complainant) as PW-1 and got marked, in all 7 documents as Ex.P-1 to Ex.P-7 on behalf of Disciplinary Authority. After the closure of evidence of Disciplinary Authority, Second Oral Statement of DGO U/R 11(16) was recorded. DGO submitted that he has defence evidence and he got examined himself as DW-1. Therefore, answers of DGO to Questionnaire U/R 11(18) of KCS (CC&A) Rules, 1957 was dispensed with. Then I have heard the learned Presenting Officer on behalf of disciplinary authority. The defence counsel has filed written brief on behalf of DGO.

8. Now, the points that would arise for my consideration are;

1 : *Whether the charge leveled against the DGO is proved by the Disciplinary Authority?*

2 : *What order?*

9. My findings to the aforesaid points are as under :-

POINT No. 1 : In the AFFIRMATIVE

POINT No. 2 : As per the final order for the following;

REASONS

10. **POINT NO. 1** : It is the case of Disciplinary Authority that the owners of property No.15/1 of Cholaragalli, Chickpete cross and property No.29 & 29/1 of Sunakalpete, Bengaluru were constructing the buildings contrary to sanction plan and building bye-laws and even then the DGO has not taken further action either to demolish the unauthorized construction or to stop the said unauthorized construction and has allowed the owners to complete such unauthorized constructions till he is transferred on 13/01/2016 except passing provisional order on 09/12/2014 and confirmation order on 08/01/2015.

11. The complainant being PW-1 has re-iterated the contents of complaint in his evidence and further he has stated that he was not supplied the copies of plan, investigation report etc., even though he has filed

application under RTI Act and he has relied on form No.I & II, copies of appeal memo filed under RTI Act, applications filed under RTI Act, written complaint and photos at Ex.P1 to Ex.P7.

12. On the other hand, DGO being DW-1 has stated that he does not know when the plans are sanctioned to property No.29, 29/1 & 15/1; AE has not reported about violations; complainant has not given complaint to him about the violations; he has not calculated as to how much violations did take place with regard to set back; he has passed provisional order & confirmation order and then he has sought for an order u/s 462 from E.E and by that time he was transferred; he does not know Ex. P6 & Ex.P7 relate to which buildings and therefore, he has not committed any dereliction of duty.

13. The learned Presenting Officer has submitted that the evidence adduced by PW-1 would clearly show that the DGO has not taken further action either to demolish the unauthorized portions of buildings or to stop the said unauthorized constructions till he was transferred on 13/01/2016 except passing provisional & confirmation order and therefore, DGO has committed dereliction of duty.

14. On the other hand, the defence assistant by filing written brief has submitted that the DGO has passed

provisional & confirmation order and then he was transferred; no complaint was given to the DGO about unauthorized construction; it is not known that the photos Ex. P6 & Ex. P7 are related to which buildings and therefore, DGO has not committed any dereliction of duty.

15. When we analyze the evidence on record, it reveals that DGO was working as Asst. Executive Engineer, Kempegowdanagar Sub-division, BBMP, Bengaluru from April 2014 to 13/01/2016. The fact of unauthorized construction in property No.29 & 29/1 of Sunakalpete and property No.15/1 of Cholaragalli, Chickpete cross was brought to the notice of DGO. The DGO has admitted this fact in his cross-examination. Then the DGO has passed the provisional order on 09/12/2014 and confirmation order on 08/01/2015.

16. It is to be noted that thereafter no further action was taken against the unauthorized construction either to stop the unauthorized construction or to remove the deviated portions of buildings. This inaction on the part of the DGO facilitated the owners of buildings to complete the unauthorized construction. The photos produced at Ex. P6 & Ex. P7 will depict the said fact. The DGO has not produced any contra evidence to show that Ex.P6 &

Ex.P7 are not related to the unauthorized construction in question.

17. If the DGO had no jurisdiction over unauthorized constructions made in the property No.15/1 of Cholaragalli, Chickpete Cross and property No.29 & 29/1 of Sunakalpete, Bengaluru, there was no necessity for him to pass the provisional and confirmation order with regard to unauthorized constructions. The DGO has neither sought for an order u/s 462 of KMC Act nor submitted any estimation to the Executive Engineer for removal of deviated portions of buildings during his period. So, his evidence that he had sought for an order u/S 462 of KMC Act from the Executive Engineer is not acceptable as there is no proof.

18. It is therefore clear from the evidence that the DGO except passing the provisional order on 09/12/2014 & confirmation order on 08/01/2015, no further action was taken either to stop the unauthorized constructions or to remove the deviated portions of buildings in the property No.15/1 of Cholaragalli, Chickpete Cross and property No.29, 29/1 of Sunakalpete, Bengaluru till he was transferred on 13/01/2016 and as such, DGO has committed dereliction of duty and therefore, I hold him guilty. Thus, the Disciplinary Authority has proved the

charge leveled against the DGO. Accordingly, I answer Point No.1 in the Affirmative.

19. **POINT NO. 2** : In view of my finding on point No. 1 and for the foregoing reasons, I proceed to pass the following ;

: ORDER :

The Disciplinary Authority has proved the charge against DGO – Sri. Madhu, Assistant Executive Engineer, Kempegowdanagar Sub-Division, Bruhath Bengaluru Mahanagara Palike, Bengaluru.

The Date of retirement of DGO is 31.05.2035.

This report is submitted to the Hon'ble Upalokayukta-1 in a sealed cover forthwith.

Dated this the 9th February, 2021

(D. Puttaswamy)
Additional Registrar (Enquiries-12)
Karnataka Lokayukta, Bengaluru

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

PW 1 : Sri. Vasanth Kumar (Complainant)

II. LIST OF DOCUMENTS MARKED ON BEHALF OF DISCIPLINARY AUTHORITY :-

Ex.P.1 : Form No. I dt:24.11.2014
Ex.P.2 : Form No. II dt:24.11.2014
Ex.P.3 : First Appeal application dt:11.08.2014
Ex.P.4 : First Appeal Application dt:11.08.2014
Representation to Hon'ble Upa-lokayukta
Ex.P.5 : dt:24.11.2014
Ex.P.6 : Photographs
Ex.P.7 : Photographs

III. LIST OF WITNESS/S EXAMINED ON BEHALF OF DGO :

D.W.1 :- Sri. R. Madhu

IV. LIST OF DOCUMENTS MARKED ON BEHALF OF DGO :

NIL

Dated this the 9th February, 2021

(D. Puttaswamy)
Additional Registrar (Enquiries-12)
Karnataka Lokayukta, Bengaluru

GOVERNMENT OF KARNATAKA



KARNATAKA LOKAYUKTA

No.UPLOK-1/DE/598/2017/ARE-12

Multi Storied Building,
Dr. B.R. Ambedkar Veedhi,
Bengaluru-560 001
Date: **19/02/2021**

RECOMMENDATION

Sub:- Departmental inquiry against;
Sri Madhu, Assistant Executive Engineer,
Kempegowdanagar Sub Division, Bruhat Bengaluru
Mahanagara Palike, Bengaluru – Reg.

- Ref:- 1) Govt. Order No.ನಅಇ 108 ಎಂಎನ್ಯು 2017, Bengaluru
dated 9/3/2017.
- 2) Nomination order No.UPLOK-1/DE/598/2017,
Bengaluru dated 26/4/2017 of Upalokayukta-1,
State of Karnataka, Bengaluru
- 3) Inquiry Report dated 9/2/2021 of Additional
Registrar of Enquiries-12, Karnataka Lokayukta,
Bengaluru

The Government by its order dated 9/3/2017 initiated the disciplinary proceedings against Sri Madhu, Assistant Executive Engineer, Kempegowdanagar Sub Division, Bruhat Bengaluru Mahanagara Palike, 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.UPLOK-1/DE/598/2017 Bengaluru dated 26/4/2017 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. Subsequently, by Order No. UPLOK-1 &

2/DE/Transfers/2018 dated 6/8/2018, the Additional Registrar of Enquiries-12, Karnataka Lokayukta, Bengaluru was re-nominated as inquiry officer to conduct departmental inquiry against DGO.

3. The DGO Sri Madhu, Assistant Executive Engineer, Kempegowdanagar Sub Division, Bruhat Bengaluru Mahanagara Palike, Bengaluru was tried for the following charge:-

“You, the DGO named above while working as Assistant Executive Engineer in the BBMP ward no. 119, Kempegowdanagara Sub-Division, BBMP, Bengaluru has shown negligent attitude in discharging your public duties and with regard to an unauthorized construction being undertaken by the owner of the property bearing no. 15/1 of Cholaragalli of Chickpet Cross Bengaluru and unauthorized construction being undertaken by the joint owners of the property bearing no. 29 and 29/1 of Sunakalpet Bengaluru, though they are constructing buildings in their respective properties as against the sanctioned plan and without leaving setbacks and deliberately violating building byelaws, a provisional order under Section 321(1) of KMC Act was issued to them on 9.12.2014 and confirmation order was served on them on 8.1.2015, but no further action was taken against the said owners, in demolishing the unauthorized portion of such construction and never bothered to initiate any further action in stopping the said unauthorised constructions and deliberately facilitated them to continue their unauthorized construction and to complete such unauthorized constructions, without proceeding against them in demolishing the structure

under construction and failed to take any further action in terms of provisions of KMC Act, till your transfer on 13.1.2016 probably for extraneous consideration, thereby acted in a manner unbecoming of a Government servant and failed to maintain absolute integrity, exhibited negligence in discharging your public duty and lack of devotion to duty and committed an act of misconduct under Rule 3(1)(i) to (iii) of KCS (Conduct) Rules 1966.”

4. The Inquiry Officer (Additional Registrar of Enquiries-12) on proper appreciation of oral and documentary evidence has held that the Disciplinary Authority has proved the above charge against DGO Sri Madhu, Assistant Executive Engineer, Kempegowdanagar Sub Division, Bruhat Bengaluru Mahanagara Palike, Bengaluru.

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

6. As per the First Oral Statement submitted by DGO, he is due to retire from service on 31/5/2035.

7. Having regard to the nature of charge proved against DGO Sri Madhu, Assistant Executive Engineer, Kempegowdanagar Sub Division, Bruhat Bengaluru Mahanagara Palike, Bengaluru, it is hereby recommended to the Government for imposing penalty of

withholding two annual increments payable to DGO Sri Madhu,
with cumulative effect.

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

Connected records are enclosed herewith.

 (9.2.2)

(JUSTICE B.S.PATIL)
Upalokayukta,
State of Karnataka,
Bengaluru