

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 06TH DAY OF APRIL, 2016

PRESENT

THE HON'BLE MR. JUSTICE JAYANT PATEL

AND

THE HON'BLE MRS. JUSTICE B.V.NAGARATHNA

WRIT PETITION No.5361/2016 (S-KAT)

BETWEEN:

SRI. J.P. PRAKASH
S/O PUTTASWAMY,
AGED ABOUT 43 YEARS,
NO.1, A/19, VASU LAYOUT,
RANGRAO COLONY,
RAMAKRISHNA NAGAR, 'I' BLOCK,
MYSURU – 570 022.

... PETITIONER

(BY SRI: BASAVARAJ V. SABARAD, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
DEPARTMENT OF TRANSPORT,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
M.S. BUILDING,
DR. B.R. AMBEDKAR ROAD,
BANGALORE – 560 001.

2. THE HON'BLE UPA-HON'BLE LOKAYUKTA,
M.S. BUILDING,
DR. AMBEDKAR VEEDHI,
BANGALORE – 560 001.

REPRESENTED BY ITS REGISTRAR. ... RESPONDENTS

(BY SRI: G.T. NARENDRA PRASAD, ADDL. GOVT. ADVOCATE
FOR R1; SRI. G. DEVARAJ, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED 22.01.2016 IN APPLICATION NO.3349/2012 ON THE FILE OF THE KARNATAKA ADMINISTRATIVE TRIBUNAL, BANGALORE AT ANNEX-A AND ALLOW THE SAID APPLICATION; AND ETC.,

THIS PETITION COMING ON FOR PRELIMINARY HEARING, THIS DAY, **JAYANT PATEL J.**, MADE THE FOLLOWING:-

ORDER

The present petition is directed against order dated 22/1/2016, passed by the Tribunal, whereby, for reasons recorded in the order, the Tribunal has not found a case for interference and the application has been dismissed.

2. We have heard Mr.Basavaraj V.Sabarad, learned counsel for petitioner and Mr. H.T.Narendra Prasad, learned Addl. Government Advocate appearing for respondent No.1 as well as Mr.G.Devaraj, learned counsel appearing for respondent No.2.

3. The contention raised by the learned counsel for petitioner was two fold: One, was that the

recommendation of Hon'ble Upa-Lokayukta under Section 12(3) of the Lokayukta Act, 1984 (hereinafter referred to as "the Act"), was under challenge before the Tribunal and further the order of the State Government, acting upon the recommendation of Hon'ble Lokayukta for initiation of enquiry was also under challenge before the Tribunal. The Tribunal, did not consider those aspects of the matter. Second, was that before passing of order under Section 12(3) by Hon'ble Lokayukta, no mandatory procedure of holding enquiry was made. He also submitted that it was required for the State Government to examine as to whether mandatory procedure was followed by Hon'ble Lokayukta before passing order under Section 12(3) of the Act or not. Not having done the same, the order would be vitiated. It was submitted that the State Government could have considered that mere possession of any money, would not constitute commission of any crime or misconduct, more particularly, when the petitioner had sufficient explanation and the same was properly considered in the investigation of crime and 'C' summary

report was filed. He submitted that the Tribunal considered the matter as if departmental enquiry can be held in a case irrespective of any criminal case being registered against the employee. The aforesaid relevant aspects were not considered by the Tribunal and as this court may consider in the present.

4. Learned counsel appearing for the respondents have supported the order passed by the Tribunal.

5. We may record that the Tribunal may not have the jurisdiction to entertain the challenge made against the order passed by the Hon'ble Lokayukta under Section 12(3) of the Act and therefore, if the said prayer is ultimately not accepted by the Tribunal, then no error could be found in the order to that extent.

6. So far as the order passed by the Government for initiation of enquiry on the report of the Hon'ble Lokayukta under Section 12(3) of the Act is concerned, we have considered the order passed by the State

Government for initiation of enquiry, more particularly the English translation produced at page Nos.98 to 100, but it cannot be said that the State Government has not considered the relevant aspects before acting upon the recommendation of Hon'ble Upa-Lokayukta under Section 12(3) of the Act. We refrain from making any observations on particular statements recorded in the order by the State Government because the whole case is at the stage where the enquiry is yet to be initiated and during the course of enquiry, the petitioner may have valid defence. If any observations are made by this Court in the present proceedings, it may prejudicially affect the rights of the parties at the inquiry or even thereafter. Hence, we leave it at that. But suffice it to observe that relevant aspects have been considered by the State Government before acting upon the recommendation of Hon'ble Lokayukta under Section 12(3) of the Act.

7. The contention that Hon'ble Lokayukta did not follow the mandatory procedure of investigation and

consequently, the order of the Hon'ble Lokayukta under Section 12(3) of the Act is illegal and could not have been acted upon by the Government cannot be accepted for two fold reasons. One is that, the Tribunal, even otherwise also, had no jurisdiction to entertain the challenge against the order of Hon'ble Lokayukta and the challenge by the petitioner was before a wrong forum. The second aspect is that the Government has acted upon the recommendation of Lokayukta under Section 12(3) of the Act for the purpose of initiation of inquiry. In the peculiar circumstance, prior to Government acting upon the order of the Hon'ble Lokayukta under Section 12(3) of the Act, there was no challenge by the petitioner and it is only after the order was passed for initiation of enquiry, the challenge is made by the petitioner to the order of Hon'ble Lokayukta under Section 12(3) of the Act. Further, the scope of enquiry even at the stage when the recommendation is made under Section 12(3) of the Act by Hon'ble Lokayukta, at the level of State Government cannot be so wide as sought to be canvassed, because, if

such an exercise is permitted, it would result in permitting the Government to exercise the appellate power against the recommendation made by the Hon'ble Lokayukta under Section 12(3) of the Act, which is neither conceived nor provided under the scheme of the Act. It is hardly required to be stated that when the Hon'ble Lokayukta has recommended for initiation of the enquiry under Section 12(3) of the Act, the Government cannot go behind the recommendation made by the Hon'ble Lokayukta unless the order of the Upa-Lokayukta is set aside by the competent court or only in exceptional circumstances and on a very strong ground can the Government make a departure. In the present case, no such extraordinary circumstance is satisfactorily demonstrated by the petitioner.

8. Apart from the above, so far as the order of the Tribunal is concerned, the Tribunal has rightly found that irrespective of the outcome of the criminal case, departmental enquiry is not prohibited in law.

9. In view of the above, we do not find any case made out for interference. Hence, the petition is dismissed.

10. There is no order as to costs.

11. In view of dismissal of the petition, I.A.No.2/16 for production of additional documents would not survive for consideration. Hence, I.A.No.2/16 also stands disposed off.

**Sd/-
JUDGE**

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JUDGE**

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