

2015 SCC OnLine Kar 8156 : ILR 2015 Kar 1615 : (2015) 2 KCCR 1563 (DB) :
(2015) 2 AIR Kant R 399 : 2015 Lab IC (NOC 253) 86

In the High Court of Karnataka
(BEFORE K.L. MANJUNATH AND P.B. BAJANTHRI, JJ.)

The Karnataka Power Transmission Corporation Ltd.

Versus

Javarai Gowda and Another*

W.A. No. 8594/2012 (S-RES)

Decided on February 18, 2015

KARNATAKA LOKAYUKTHA ACT, 1984 R/VV RULE 14(A) OF THE KARNATAKA ELECTRICITY BOARD EMPLOYEES' (C.D.C. and A) REGULATIONS, 1987 — Disciplinary proceedings against first respondent — Appointment of Enquiry Officer by the Upalokayuktha — Receipt of the enquiry report — Upalokayuktha disagreeing with the findings of the Enquiry Officer and recommended to impose penalty on the first respondent — Penalty of compulsory retirement on the first respondent — Legality of — HELD, The decision of the Upalokayuktha disagreeing with the Enquiry Officer's finding and to hold that charges are proved against the respondent is without authority of law. — It is to be noted that the respondent was subjected to disciplinary proceedings. The Upalokayuktha submitted investigation report under Section 12(3) of the Karnataka Lokayuktha Act to the appellant for taking further action against the respondent under Rule 14(A) of the KEB Employees' (C.D.C. and A.) Regulations, 1987. Reading of Section 12(3) and (4) of the Karnataka Lokayuktha Act, 1984 read with Rule 14(A) of the KEB Employees' (C.D.C. & A.)



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Regulations, 1987, the power to disagree with the Enquiry Officer's finding and to come to a different conclusion than the Enquiry Officer and to recommend for imposition of particular penalty to the appellant is not forthcoming. — FURTHER HELD, Under the Lokayuktha Act, the Upalokayuktha has appointed an Enquiry Officer to conduct enquiry and after receipt of the report from the Enquiry Officer, he shall refer the matter to the disciplinary authority to take action. But the Upalokayuktha has no power to sit in judgment over the report of the Enquiry Officer. The recommendation made by the Upalokayuktha to impose penalty is bad in law and not sustainable in law. — The disciplinary authority imposed the punishment on the respondent No. 1 solely relying upon the recommendations made by the Upalokayuktha. The same is unsustainable in law.

(Paras 11, 12)

Writ Appeal is Dismissed.

CASES REFERRED

AT PARA

1. (2004) 6 SCC 440 *Captain Sube Singh v. Lt. Governor of Delhi* (Ref)
2. (2011) 5 SCC 435 *Joint Action Committee of Air Line Pilots' Association of India v. DG of Civil Aviation* (Ref)



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3. (2012) 5 SCC 242 *Vijay Singh v. State of Uttar Pradesh*

(Ref)

4. (2014) 1 SCC 351 : AIR 2014 SC 88 *Union of India v. B.V. Gopinath*

(Ref)

M/s. Sundaraswamy & Ramdas, Advocates for Appellant;

Sri P.S. Manjunath, Advocate for R-1;

Sri G. Devaraj, Advocate for R2.

The Judgment of the Court was delivered by

K.L. MANJUNATH, J.:— Legality and correctness of the order passed by the Learned Single Judge on 22.9.2012 is called in question in this appeal by the Appellant — Corporation.

2. Heard Sri S.S. Ramdas, Learned Senior Counsel for the appellant and Learned Counsel appearing for the first respondent.

3. The facts leading to this appeal is as under:—

The first respondent was working as Junior Engineer in the Appellant-Corporation. On 21.11.1992 a trap was laid by the



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Lokayuktha alleging that respondent No. 1 demanded a sum of Rs. 100/- as bribe from one K.P. Ramalingaiah for showing official favour to him. Based on the trap on 21.11.92 and the report of the Inspector General of Police of Lokayuktha, the first respondent was kept under suspension with effect from 14.12.92 pending consideration of the departmental enquiry.

The appellant referred the matter to the Upalokayuktha to hold an enquiry. The Upalokayuktha appointed an Enquiry Officer on his behalf to conduct enquiry. The Enquiry Officer submitted his report stating that the charges leveled against the first respondent has not been proved. In spite of the same, the Upalokayuktha has sent his own opinion disagreeing with the findings of the Enquiry Officer in respect of charge No. 1 holding that the same has been proved. Based on the recommendations of the Upalokayuktha the disciplinary authority found guilty and imposed punishment of compulsory retirement.

4. The order of the disciplinary authority was questioned by the first respondent by filing Writ Petition No. 32370/2002. This Court on 3.7.06 set-aside the order passed by the disciplinary authority and directed the disciplinary authority to decide the matter afresh in terms of the observations made in paras 12(a) to (d) of the Order dated 03.07.2006.

5. Again the matter was heard by the disciplinary authority and confirmed the order of punishment vide Annexure-Q dated 18.10.2010



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and this order was questioned by the first respondent by filing writ petition before the Learned Single Judge. The Learned Single Judge having heard the parties, allowed the writ petition and quashed the Order dated 18.10.2010 passed by the appellant vide Annexure-Q to the writ petition. Challenging the same the present appeal is filed.

6. Sri S.S. Ramdas, Learned Senior Counsel for the appellant submits that the Learned Single Judge has committed an error in setting aside the order passed by the appellant on the ground that Upalokayuktha has no power to differ from the findings of the Enquiry

Officer and recommending to the appellant to punish the respondent in accordance with law. According to him, as per regulations of KEB, the Upalokayuktha was requested to hold an enquiry and Upalokayuktha after conducting an enquiry as required under the procedure, can recommend for punishment. He contends that, the Upalokayuktha has power to disagree with the findings of the Enquiry Officer and has power to recommend to impose punishment and therefore, he requests to set-aside the order passed by the Learned Single Judge and dismiss the writ petition.

7. Per contra, the Learned Counsel for the first respondent submits that as per regulation, the appellant had requested the Upalokayuktha to conduct the enquiry and submit the report. In other words, if the Upalokayuktha has conducted the enquiry personally as an Enquiry Officer, he has a right to recommend to take disciplinary action. According to him once the Upalokayuktha in turn appointed



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an Enquiry Officer to hold enquiry and if a report is received by him, he can only transmit the findings of the Enquiry Officer to the disciplinary authority to take action in accordance with law. Therefore, he contends that the Upalokayuktha having entrusted the work of enquiry to the Enquiry Officer, after receipt of the enquiry report, he cannot sit in judgment over the findings of the Enquiry Officer and he cannot assume the position of a Disciplinary authority. In the circumstance, he requests this Court to allow this appeal.

8. The only point that arises for consideration in this appeal is whether the Upalokayuktha having appointed the Enquiry Officer to conduct the enquiry and after receipt of the enquiry report, can disagree with the findings of the Enquiry Officer and recommend to the appellant to impose penalty on the first respondent?

9. The respondent No. 1 was working as Junior Engineer under the appellant. The trap was laid on the ground that he demanded bribe of Rs. 100/- and the charge sheet was filed before the Special Court. He has been acquitted as the charges levelled against him was not proved. Simultaneously, the appellant requested the Upalokayuktha to hold an enquiry pursuant to regulation of KEB. The Upalokayuktha instead of conducting enquiry personally, has appointed an Enquiry Officer in terms of the power vested in him. The Enquiry Officer after conducting enquiry submitted a report stating that the charges leveled against the first respondent are not proved. The Upalokayuktha after receipt of the report, disagreeing with the findings of the Enquiry



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Officer recommended to impose penalty on the first respondent. Based on the same, the appellant has imposed the penalty of compulsory retirement.

10. The short question that arises for our consideration is whether the Upalokayuktha can disagree with the findings of the Enquiry Officer and give an opinion sitting as a disciplinary authority. In other words, whether a power is vested with the Lokayuktha Act enabling him to differ from the findings of the Enquiry Officer as disciplinary authority.

11. Regulation 14-(A) of the K.E.B. Employees' (C.D.C. & A) Regulations, 1987 reads as under:—

14-(A). Special Procedure in Certain Cases.- (1) The following provisions shall, notwithstanding anything contained in Regulations 10 to 11-A and 13 be applicable for purposes of proceeding against Board employees whose alleged misconduct has been investigated into by the Vigilance Commission/Lokayukta/Upa-lokayukta either suo motu or on a reference from the Board or from any other authority, viz.-

a) where on investigation into any allegation against.-



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i) a member of the Board services Group A, B, C or D in respect of an allegation of a serious nature; the Vigilance Commissioner/Lokayukta/Upa Lokayukta or any Officer of the Vigilance Commission/Lokayukta/Upa Lokayukta authorised by him in writing under sub-rule 2 of Rule 5 of Karnataka State Vigilance Commission's Rules, 1980/Rule 12 of the Karnataka Lokayukta/Upa Lokayukta Act, 1984 is of the opinion that disciplinary proceedings shall be taken, he shall forward the record of investigation along with his recommendations to the Board, and the Board after examining such records, may either direct an inquiry into the case by the Vigilance Commission/Lokayukta/Upa Lokayukta or direct the Appropriate Disciplinary Authority to take action in accordance with Regulation 12.

b) Where the Vigilance Commission/Lokayukta/Upa Lokayukta is directed to hold an inquiry into a case under clause (a) the Inquiry may be conducted either by the Vigilance Commissioner/Lokayukta/Upa Lokayukta authorised by the Vigilance Commissioner/Lokayukta/Upa Lokayukta to conduct the inquiry.



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Provided that the inquiry of a case relating to a Board employee shall not be conducted by an Officer lower in rank than that of such Board employee;

c) The Vigilance Commissioner/Lokayukta/Upa Lokayukta or the Officer Authorised to conduct the inquiry under clause (b) shall conduct the inquiry in accordance with the provisions of sub-regulation (2) to (20) and sub-regulation (23) of Regulation 11 and for the purposes of conducting such inquiry, shall have the power of the Disciplinary Authority referred to in the said Regulation;

d) After the inquiry is completed, the records of the case with the findings of the Inquiring Officer and the recommendations of the Vigilance Commissioner/Lokayukta/Upa Lokayukta shall be sent to the Board;

e) On receipt of the records under clause (d), the Board shall take action in accordance with the provisions of sub-regulation (21) and sub-regulation (23) of Regulation 11 and Regulation 11-A, and in all such cases the Board



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shall be competent to impose any of the penalties specified in Regulation-9.

Explanation.- In this regulation, the expressions 'Vigilance Commission/Lokayukta/Upa Lokayukta' and 'Vigilance Commissioner/Lokayukta/Upa Lokayukta' shall respectively have the meanings assigned to them in the respective rules/Act and further amendments made to the above from time to time."

Section 12 of the Karnataka Lokayukta Act, 1984 reads thus:—

"12. Reports of Lokayukta, etc.—

(1) x	x	x	x
(2)			
x	x	x	x

(3) If, after investigation of any action involving an allegation has been made, the Lokayukta or an Upa-lokayukta is satisfied that such allegation is substantiated either wholly or partly, he shall by report in writing communicate his findings and recommendations along with the



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relevant documents, materials and other evidence to the Competent Authority.

(4) The Competent Authority shall examine the report forwarded to it under sub-section (3) and within three months of the date of receipt of the report, intimate or cause to be intimated to the Lokayukta or the Upa-lokayukta the action taken or proposed to be taken on the basis of the report."

One of the question for consideration is whether Upalokayuktha can disagree with the findings of the Enquiry Officer. It is to be noted that the respondent was subjected to disciplinary proceedings. The Upalokayuktha submitted investigation report under Section 12(3) of the Karnataka Lokayukta Act to the appellant herein for taking further action against the respondent under Rule 14(A) of the KEB Employees' (C.D.C. and A.) Regulations, 1987. Reading of Section 12(3) and (4) of the Karnataka Lokayukta Act, 1984 read with Rule 14(A) of the KEB Employees' (CDC & A) Regulations, 1987 the power to disagree with the Enquiry Officer's finding and to come to a different conclusion than the Enquiry Officer and to recommend for imposition of particular penalty to the appellant is not forthcoming. Therefore, decision of the Upalokayukta disagreeing with the Enquiry Officer's finding and to hold that charges are proved against the respondent is without authority of law. In support of the aforesaid principle, the Learned Advocate for the respondent relied on three decisions of the



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Apex Court namely, (2004) 6 SCC 440; (2011) 5 SCC 435 and (2012) 5 SCC 242 which are reported in SCC, extract of the decision are reproduced herein:—

*Captain Sube Singh v. Lt. Governor Of Delhi*¹;

"29. In *Anjum M.H. Ghaswala, a Constitution Bench of this Court reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. (See also in this connection Dhananjaya Reddy v. State of Karnataka). The statute in question requires the authority to act in accordance with the rules for variation of the conditions attached to the permit. In our view, it is not permissible to the State Government to purport to alter these conditions by issuing a notification under Section 67(1)(d) read with sub-clause (i) thereof.*

*Joint Action Committee of Air Line Pilots Assn. of India v. DG of Civil Aviation*²,



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"27. Similar view has been reiterated by this Court in *Commr. of Police v. Gordhandas Bhanji, Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia and Pancham Chand v. State of H.P.*, observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure therein

and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme.

28. In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even a senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner."

*Vijay Singh v. State of Uttar Pradesh*³;

"14. The issue involved herein is required to be examined from another angle also. Holding departmental proceedings and recording a finding of guilt against any delinquent and imposing the



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punishment for the same is a quasi-judicial function and not administrative one. (*Vide Bachhattar Singh v. State of Punjab, AIR 1963 SC 395; Union of India v. H.C. Goel, AIR 1964 SC 364; Mohd. Yunus Khan v. State of U.P., (2010) 10 SCC 539; and Chairman-cum -Managing Director, Coal India Ltd. v. Ananta Saha, (2011) 5 SCC 142*

15. Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules. Thus, the order of punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the appellant."

Further, in *Union of India v. B.V. Gopinath*⁴, the Supreme Court has held as under:—

"43. Accepting the submission of Ms. Indira Jaising would run counter to the well known maxim *delegatus non protest delegare* (or *delegari*). The



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principle is summed up in "*Judicial Review of Administrative Action*" De Smith, Woolf and Jowell (*Fifth Edition*) as follows:—

"The rule against delegation

A discretionary power must, in general, be exercised only by the authority to which it has been committed. It is a well-known principle of law that when a power has been confided to a person in circumstances indicating that trust is being placed in his individual judgment and discretion, he must exercise that power personally unless he has been expressly empowered to delegate it to another."

The same principle has been described in "*Administrative Law*" H.W.R. Wade & C.F. Forsyth (*Ninth Edition*), Chapter 10, as follows:—

"Inalienable discretionary power

An element which is essential to the lawful exercise of power is that it should be exercised by the authority upon whom it is conferred, and by no one else. The principle is strictly applied, even where it causes administrative inconvenience, except in



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cases where it may reasonably be inferred that the power was intended to be delegable. Normally the courts are rigorous in requiring the power to be exercised by the precise person or body stated in the statute, and in condemning as ultra vires action taken by

agents, sub-committees or delegates, however expressly authorized by the authority endowed with the power."

44. This principle has been given recognition in *Sahni Silk Mills (P) Ltd.* (1994 AIR SCW 3832) (supra), wherein it was held as under:

"6. By now it is almost settled that the legislature can permit any statutory authority to delegate its power to any other authority, of course, after the policy has been indicated in the statute itself within the framework of which such delegatee (sic) is to exercise the power. The real problem or the controversy arises when there is a sub-delegation. It is said that when Parliament has specifically appointed authority to discharge a function, it cannot be readily presumed that it had intended that its delegate should be free to empower another person or body to act in its place".



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12. As rightly pointed out by the first respondent, under the Lokayuktha Act, the Upalokayuktha has appointed an Enquiry Officer to conduct enquiry and after receipt of the report from the Enquiry Officer, he shall refer the matter to the disciplinary authority to take action. But the Upalokayuktha has no power to sit in judgment over the report of the Enquiry Officer. The recommendation made by the Upalokayuktha to impose penalty is bad in law and not sustainable in law. Based on such legal position, if the Learned Single Judge has come to the conclusion that the recommendation of the Upalokayuktha to impose penalty on the first respondent is bad in law. In this case, the disciplinary authority imposed the punishment on the respondent No. 1 solely relying upon the recommendations made by the Upalokayuktha. The same is unsustainable in law. So we answer the point against the appellant.

13. In the result, the appeal is dismissed. The parties to bear their costs.

* W.A. No. 8594/2012 (S-RES), Dated : 18th day of February, 2015

1. (2004) 6 SCC 440

2. (2011) 5 SCC 435

3. (2012) 5 SCC 242

4. (2014) 1 SCC 351 : AIR 2014 SC 88

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