

2018 SCC OnLine Kar 2284 : ILR 2018 Kar 2347 : (2018) 4 Kant LJ 1 (DB) :
(2018) 3 KCCR 2646 (DB) : (2018) 4 AIR Kant R 523

In the High Court of Karnataka
(BEFORE DINESH MAHESHWARI, C.J. AND B.M. SHYAM PRASAD, J.)

Gopal Hanumanth Kase

Versus

State of Karnataka and Others*

W.P. No. 5674/2018 (GM-KLA)

Decided on April 13, 2018

Karnataka Lokayukta Act, 1984 (for short "the Act of 1984") — Section 12(3) — Report submitted by the Upalokayukta-1 recommending initiation of disciplinary action against the petitioner — Entrustment order passed by the Government as the Competent Authority — At stage of entrustment, 'prima facie' satisfaction of the Competent Authority is necessary, detailed or even a summary inquiry is not necessary —

Held :

The petitioner answers to the definition of "public servant" as occurring in Clause (12) of Section 2 of the Act of 1984, being in the service of local authority in the State of Karnataka; and in his case, the Competent Authority for the purpose of dealing with the matter under the Act of 1984



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would be such Authority, as may be prescribed, by virtue of sub-Clause (d) of Clause (4) of Section 2 thereof. — Under the Karnataka Lokayukta Rules, 1985, the Government of Karnataka is the prescribed Competent Authority for the public servants referred to in sub-Clause (d) of Clause (4) of Section 2 of the Act of 1984.

(Para 1)

Further Held :

(a) A contents of the report made under Section 12(3) of the Act of 1984, particularly paragraphs 6 and 7 thereof, make it clear that the Upalokayukta definitely took into account the replies/comments of the petitioner and found the same not acceptable so as to drop the proceedings against him. — Similarly the order passed by the Government, as the Competent Authority, for entrusting the matter to the Upalokayukta for instituting departmental inquiry cannot be said to be suffering from non-application of mind. Therein, the gist and substance of the report made by the Upalokayukta has been taken note of and it has been indicated that after perusal of the report and the documents enclosed therewith, the Government decided to institute the inquiry.

(Para 1)

(b) At the given stage of entrusting the matter for inquiry, the Government, as the Competent Authority, was not expected



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to enter into a detailed or even a summary inquiry with consideration of reply/defence of the petitioner. The impugned order, read as a whole, makes it clear that the satisfaction of the Competent Authority about existence of the *prima facie case* has been indicated therein and that had been sufficient compliance of the requirement of law.—

(1) Karnataka Lokayukta Act, 1984 — Subclause (d) of Clause 4 of Section 2 — (2)

Karnataka Lokayukta Rules, 1985 — Rule 3(3) Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 — Clause (1) of Rule 11 — Discussed.

Writ Petition is Dismissed.

Cases Referred

1. ILR 2015 KAR 5591

Kumaraswamy Mineral Exports Pvt. Ltd. v. State of Karnataka, by Addl. Chief Secretary, Department of Commerce & Industries

2. W.P. No. 43079/2015 : DD 06.03.2017

The Karnataka Lokayukta v. Sri H.N. Niranjana

3. W.P. No. 23522/2016 : DD 04.10.2016

Mr. Jayaprakash K. v. State of Karnataka



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4. W.P. No. 58174/2017 : DD 26.03.2018

Sri Gopalakrishna v. The State of Karnataka

Advocates who appeared in this case:

Sri M.S. Bhagwat, Advocate for Petitioner;

Sri Y.D. Harsha, AGA for Respondents.

The Judgment of the Court was delivered by

DINESH MAHESHWARI, C.J.:— By way of this writ petition, the petitioner seeks to question the report dated 14.08.2017, as made by the Upalokayukta-1, Karnataka State; the entrustment order dated 07.12.2017, as issued by the Government of Karnataka in its Urban Development Department; and the Article of Charges dated 04.01.2018, as issued by the Additional Registrar of Enquiries-9, Karnataka Lokayukta.

It is contended that the petitioner, working on the post of Commissioner, City Municipal Council, Jamakhandi, is governed by the Karnataka Municipalities (Recruitment of Officers and Employees) Rules, 2010 [‘the Rules of 2010’]. According to the petitioner, as per the said Rules of 2010, the Director of Municipal Administration is the appointing and the disciplinary authority in his regard and hence, the Government has no power to regulate his service conditions; that only



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the said Director is the competent authority to entrust the matter for holding inquiry; and that the respondent No. 1 has no jurisdiction to pass any such entrustment order. The petitioner has also questioned the report submitted by the Upalokayukta-1 under Section 12(3) of the Karnataka Lokayukta Act, 1984 [‘the Act of 1984’], recommending initiation of disciplinary action against him without considering his reply. It is further submitted that there is total non-application of mind on the part of the respondent No. 1, while issuing the order impugned.

Learned Additional Government Advocate has refuted the contentions aforesaid with the submissions that the reply submitted by the petitioner was duly considered by the

Upalokayukta-1, who declined to drop the proceedings after finding a *prima facie* case of misconduct, and recommended to the competent authority to initiate the disciplinary proceedings.

Learned Additional Government Advocate has particularly referred to the definition of "competent authority" as occurring in Section 2(4) of the Act of 1984, as also that of "public servant" in Section 2(12) thereof. Learned AGA has also referred to the recommendation of the competent authority as specified under the Karnataka Lokayukta Rules, 1985 ['the Rules of 1985'].

Learned Counsel for the parties have referred to and relied upon the following decisions:



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- 1) *Kumaraswamy Mineral Exports Pvt. Ltd. v. State of Karnataka, Byaddl. Chief Secretary, Department of Commerce & Industries*¹;
- 2) *The Karnataka Lokayukta v. Sri H.N. Niranjan*²;
- 3) *Mr. Jayaprakash K. v. State of Karnataka*³; and
- 4) *Sri Gopalakrishna v. The State of Karnataka*⁴.

Having given thoughtful consideration to the submissions made and having examined the matter in its totality, we find no reason to consider any interference.

The decision in *Kumaraswamy Mineral Exports Pvt. Ltd.* (supra) had been on an entirely different set of facts and grounds, where the complainant concerned had exhausted all the remedies under the Mines and Minerals (Development and Regulation) Act, 1957 and before the High Court and thereafter, went on to agitate the same rights in the guise of lodging complaint to



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the authorities. It was further found that in view of Sections 8(1)(b) and 8(2)(c) of the Act of 1984, the Karnataka Lokayukta could not have undertaken the investigation in the matter. The present matter stands at a different footing, for the reason that, in essence, the allegation against the petitioner is of not attending on his duties of removing the unauthorized construction, despite having been directed to do so by the authority concerned.

In the case of *H.N. Niranjan* (supra), this Court has indicated that there has to be an examination of the case by the Government under Section 12(4) of the Act of 1984 with due application of mind while concurring with the opinion of the Lokayukta for initiation of the inquiry. Significantly, the said petition in *H.N. Niranjan's* case was filed by the Lokayukta and not by the State Government and this aspect was distinctly noticed by the Court, while finding no ground for interference.

On the other hand, in the case of *Jayaprakash K.* (supra), this Court rejected the challenge by a Panchayat Development Officer to the report made by the Lokayukta and the order of the State Government for initiation of the inquiry, while observing that such a report cannot be said to be without jurisdiction and that by itself was not affecting any legal right of the petitioner. The Court found that the Competent Authority had passed the order entrusting the matter to the Upalokayukta, as provided under Rule 14-A(2)(a) of the Karnataka Civil Services (Classification, Control and

Appeal) Rules,



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1957, to hold an inquiry in respect of misconduct alleged against him; and while refusing to interfere, this Court observed that it was for the petitioner to face the inquiry in question.

In the case of *Gopalakrishna* (supra), the employee concerned had been working as Chief Officer of the Town Municipal Council, who attempted to question the report made under Section 12(3) of the Act of 1984 and the subsequent order initiating disciplinary proceedings. While referring to the aforesaid decision in *Jayaprakash's* case, this Court rejected the writ petition.

Having examined the decisions aforesaid and the statutory provisions applicable to the case, we have no hesitation in finding that the petitioner answers to the definition of "public servant" as occurring in Clause (12) of Section 2 of the Act of 1984, being in the service of local authority in the State of Karnataka; and in his case, the Competent Authority for the purpose of dealing with the matter under the Act of 1984 would be such Authority, as may be prescribed, by virtue of sub-Clause (d) of Clause (4) of Section 2 thereof. The relevant clauses read as under:

"2. Definitions.

xxx

xxx

xxx

(4) "competent authority" in relation to a public servant means,-



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(a) in the case of Chief Minister or a member of the State Legislature, the Governor acting in his direction;

(b) in the case of a Minister or Secretary, the Chief Minister;

(c) in the case of a Government servant other than a Secretary, the Government of Karnataka;

(d) in the case of any other public servant, such authority as may be prescribed;

(12) "public servant" means a person who is or was at any time,-

xxx

xxx

xxx

(g) a person in the service or pay of,-

(i) a local authority in the State of Karnataka

xxx

xxx

xxx"



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It has been pointed out that under the Rules of 1985, the Government of Karnataka is the prescribed Competent Authority for the public servants referred to in sub-Clause (d) of Clause (4) of Section 2 of the Act of 1984. Rule 3 of the Rules of 1985, reads as under:

"3. Competent Authority.-In respect of the public servants referred to in sub-clause (d) of clause (4) of Section 2, the Government of Karnataka shall be the Competent Authority."

In view of the above, the submission that the matter has not been dealt with by the Competent Authority because of applicability of the Rules of 2010 to the service of the petitioner, is required to be rejected. Even under the said Rules of 2010, it is but clear that the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 do apply in regard to the disciplinary proceedings against the petitioner. The applicability of the said Rules of 1957 is distinctly stated in Clause (1) of Rule 11 of the Rules of 2010, which reads as under:

"11. Application of certain other rules: Without prejudice to these rules, the provisions of-

(1) The Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957



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shall apply subject to modifications specified in Schedule III.

xxx

xxx

xxx"

Of course, under the said Clause (1) of Rule 11, the Rules of 1957 apply to the employees like the petitioner, subject to the modifications specified in Schedule III to the Rules of 2010. But, such modifications in Schedule III have no bearing on the subject matter of this petition. Under the said Schedule-III, only the authorities, who are competent to impose punishment, as also the Appellate Authorities have been specified. Such provisions do not, in any manner, nullify or override the effect of the Act of 1984 and the Rules made thereunder. The first submission as made on behalf of the petitioner is, there fore, required to be rejected.

The other submissions are also without substance and deserve to be rejected.

A contents of the report made in this case under Section 12(3) of the Act of 1984 (Annexure-K), particularly paragraphs 6 and 7 thereof, make it clear that the Upalokayukta definitely took into account the replies/comments of the petitioner and found the same not acceptable so as to drop the proceedings against him. Similarly, the order passed by the Government, as the Competent Authority, for entrusting the matter to the Upalokayukta for instituting departmental



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inquiry cannot be said to be suffering from non-application of mind. Therein, the gist and substance of the report made by the Upalokayukta has been taken note of and it has been indicated that after perusal of the report and the documents enclosed therewith, the Government decided to institute the inquiry.

In our view, at the given stage of entrusting the matter for inquiry, the Government, as the Competent Authority, was not expected to enter into a detailed or even a summary inquiry with consideration of reply/defence of the petitioner. The impugned order dated 07.12.2017, read as a whole, makes it clear that the satisfaction of the Competent Authority about existence of the prima facie case has been indicated therein and that had been sufficient compliance of the requirement of law.

For what has been discussed hereinabove, the contentions urged on behalf of the

petitioner fail and therefore, this petition is required to be dismissed.

However, in the interest of justice, it is made clear that we have not pronounced on the merits of the case either way and it shall be expected of the Authority concerned to proceed with the matter strictly in accordance with law.

With the observations foregoing, the petition stands dismissed. No costs.

* W.P. No. 5674/2018 (GM-KLA), Dated : 13th day of April, 2018.

1. ILR 2015 KAR 5591.

2. W.P. No. 43079/2015 : DD 06.03.2017.

3. W.P. No. 23522/2016 : DD 04.10.2016.

4. W.P. No. 58174/2017 : DD 26.03.2018.

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