IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

R

ON THE 30TH DAY OF JANUARY 2020

PRESENT

THE HON'BLE MR. JUSTICE K.N. PHANEENDRA

AND

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

WRIT PETITION NO.105359 OF 2019 (GM-KLA)

AND

WRIT PETITION NO.114148 OF 2019

BETWEEN

1. SRI. R. V. JATTANNA
S/O V.D. JATTANNA,
AGE: 61 YEARS,
THE THEN COMMISSIONER TMC KARWAR,
PRESENTLY WORKING AS
COMMISSIONER OF
TOWN MUNICIPAL COUNCIL,DANDELI,
DIST: UTTARA KANNADA,

2. SRI. MOHANRAJ
ASSISTANT ENGINEER,
CITY MUNICIPAL COUNCIL KARWAR,
DIST: UTTARA KANNADA.

... PETITIONERS

(BY SRI. J. S. SHETTY, ADVOCATE)

AND

1. THE STATE OF KARNATAKA
BY ITS SECRETARY,
DEPARTMENT OF
URBAN DEVELOPMENT,

VIKASA SOUDHA,
BENGALURU.

2. UPA-LOKAYUKTA-1
KARNATAKA LOKAYUKTA OFFICE,
M.S. BUILDING,
DR.B.R.AMBEDKAR VEEDHI,
BENGALURU.

3. SRI.SHRIKANT IRA BANVAYEKAR
AGE: MAJOR,
R/O: M.G. ROAD,
NEAR LIC OFFICE,
KAJUBHAG, TQ: KARWAR,
DIST: UTTARA KANNADA.

4. DYSP, KARNATAKA LOKAYUKTA
KARWAR,
DIST: UTTARA KANNADA.

... RESPONDENTS

(BY SRI. G. K. HIREGOUDAR, GOVT. ADV., FOR R1;
SRI. SANTOSH B. MALAGOUDAR, ADV., FOR R2 & R4;
R3- NOTICE SERVED)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE GOVERNMENT ORDER No.NaAaE62/DMK/2018, BENGALURU DATED 28.07.2018, PASSED BY THE FIRST RESPONDENT, THE COPY OF WHICH HAS BEEN PRODUCED HEREWITH AND MARKED AS ANNEXURE-A AND ALSO THE REPORT SUBMITTED BY THE SECOND RESPONDENT IN COMPLAINT DATED 28.04.2018 IN Compt/Uplok/BGM-2495/17/ARE-6 and Compt/Uplok/BGM-2316/17/ARE-6, THE COPY OF WHICH HAS BEEN PRODUCED HEREWITH AND MARKED AS ANNEXURE-B, INSOFAR AS PETITIONERS ARE CONCERNED.

THESE WRIT PETITIONS COMING ON FOR PRELIMINARY HEARING, THIS DAY, **K.N.PHANEENDRA, J.,** MADE THE FOLLOWING:

ORDER

The present writ petitions are filed seeking relief of quashing the government order passed by the 1st respondent/the State of Karnataka in No. NaAaE62/DMK/2018, Bengaluru, dated 28.07.2018 as per Annexure-A and also the report submitted by the 2nd respondent i.e. Upa-lokayukta in Complaint dated No.28.04.2018 in Compt/Uplok/BGM-2495/17 /ARE-6 and Compt/Uplok/BGM-2316/17/ARE-6 as per Annexure-B and for such other reliefs as the Court deems fit to grant under the circumstances of the case.

2. We have heard the arguments of the learned counsel for petitioners and the learned Government Advocate for respondent No.1 and the learned standing counsel for respondent Nos.2 and 4. We have also carefully perused the legal grounds raised in these writ petitions and also the factual aspects. The facts which are not in dispute are that

the Upa-lokayukta/2nd respondent, after conducting a preliminary enquiry, submitted his report on 28.04.2018 holding that a *prima-facie* case has been made out for the purpose of conducting disciplinary enquiry against the petitioners and as per Annexure-B, requested the 1st respondent/ State Government to entrust the matter to the Lokayukta for the purpose of conducting disciplinary enquiry, as per paragraph 11 and 12 of the order. After receipt of the said order, the government passed an order as per Annexure-A, entrusting the matter to Upa-lokayukta for conducting disciplinary enquiry as contemplated under Section 14 of the CCA Rules. Further, it is also not in dispute that the said disciplinary enquiry is pending before Upa-lokayukta and report is awaited.

3. The learned counsel for the petitioners Mr.J.S.Shetty strenuously contends before this

Court drawing our attention to Section 12 of the Karnataka Lokayukta Act (for short "the Act") particularly, with reference to Section 12(3) and 12(4) of the Act and argued that, the government has got power to receive the report from Upa-lokayukta under Section 12(3) of the Act, and in turn also the request made by the Upa-lokayukta to hold a disciplinary enquiry against the employee of the government or any public servant. But the government itself cannot refer back the matter to Upa-lokayukta to conduct for further disciplinary enquiry, because it is only the action that has been taken by the government to be reported to Upa-lokayukta as per Section 12(4) of the Act. The wordings used in the said provision that the action taken by the government should be intimated to the Lokayukta or Upa-lokayukta or the action proposed to be taken on the basis of the report shall be intimated to Upa-lokayukta.

4. Referring to the present case the learned counsel very strenuously argued before this Court that, the petitioners are the municipal servants and they are governed by separate rules called as Karnataka Municipalities (Recruitment of Officers and Employees) Rules, 2010. He has also drawn our attention to Rule 11 and contended that though the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 was made applicable to the servants of the municipaiity, but subject to modifications specified in Schedule-III. Therefore, the learned counsel contends, if the said provision is read in their proper perspective, the authorities mentioned therein is not the government but municipal authorities, who are the disciplinary authorities, appointing authorities and removing authorities of its servants. Further it is contended that the employees of Municipalities and Corporation cannot be called as public servants, but they are only to be called as employees of the

municipality. Therefore, he specifically contends before this Court that even the provisions of CCA Rules, particularly, Rule 14(A) is applicable, the government has only got power to receive report from Lokayukta under Section 12(3) of the Act, but the government cannot entrust back the proceedings to Upa-lokayukta for the purpose of conducting disciplinary enquiry. At the most, the government under section 12(4) of the Act can propose the action taken by it to Upa-lokayukta, that Government has intimated the concerned disciplinary authorities to take action against its employees either by themselves conducting the disciplinary enquiry (D.E) or by entrusting the same to Upa-lokayukta. Therefore, he contends in this particular case, as the petitioners are municipal employees, the government has no jurisdiction to propose any action to be taken against them and entrust the matter to Upa-lokayukta, for to conduct the disciplinary enquiry. Hence, the entire

proceedings pending before Upa-lokayukta is vitiated by serious illegality. Hence, the same is liable to be quashed.

5. The learned counsel for respondent Nos.1 and 2 attaching the above said submission made by the learned counsel for the petitioners, submitted that the proposed action, as contained in sub-clause 4 of Section 12 of the Act, includes the government, which is a superior authority to all the other instrumentalities departments in State like Municipal Administrations and other authorities, has got power to refer the matter to Upa-lokayukta for disciplinary enquiry under the Act. They also relied upon the CCA Rule 14-A and submitted that only after receipt of Upa-lokayukta's report, after conducting the disciplinary enquiry, then only the government for the purpose of inflictment the punishment to the delinquent employee has to send the matter to the disciplinary authorities for

appropriate action under Rule 12 of the CCA Rules. Therefore, they submit that it goes without saying that the proposed action as mentioned in Section 12(4) of the Act, includes referring of the matter by the government to the Upa-lokayukta for disciplinary enquiry. It is submitted by the learned counsel that some disciplinary authorities, who are the government servants, even the Panchayath Officers and Deputy Commissioners, Assistant Commissioners and some of the officers, who are working under the government, they may, after the receipt of report of the Upa-lokayukta, sit over the same and nullify the effect of the report submitted by the Upa-lokayukta and discharge their employees then and there itself, even without conducting the disciplinary enquiry. The main object of introducing Karnataka Lokayukta Act and the relevant provisions therein empowering government, which is the superior authority to all the authorities in the state, if it feels that it is

necessary to take disciplinary action, the government itself can refer the matter to the Upa-lokayukta after satisfying itself with reference to the report submitted by the Upa-lokayukta so as to avoid the mischief that may happen, if the said report of the Upa-lokayukta is sent to the disciplinary authorities by empowering them either to take action or to refer the matter to Upa-lokayukta. Therefore, the magnanimous intentions of the legislatures have to be read into the provisions under Section 12(4) of the Act. They also relied upon various rulings, which we are going to discuss little later.

6. Before considering the submissions of the respective counsels, we would like to have a brief look at the provisions of Karnataka Lokayukta Act, which defines who is a public servant, which is the competent authority and who is the disciplinary authority.

7. Apart from defining who is a Government Servant under Section 2(6) of the Act, Section 2 clause (12) of the Act defines who is a public servant. Very sensibly the Karnataka Lokayukta Act does not refer the word "government servant" in this section it refers to "public servant". clause (12) of Section 2 reads as follows:

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

(a) the Chief Minister,

(b) a Minister,

(c) a member of the State Legislature;

(d) a Government Servant:"

(e) the Chairman and the Vice-Chairman (by whatever name called) or a member of a local authority in the State of Karnataka or a statutory body or corporation established by or under any law of the State Legislature, including a co-operative society, or a Government Company within the meaning of Section

617 of the Companies Act, 1956 and such other corporations or boards as the State Government may, having regard to its financial interest in such corporations or boards, by notification, from time to time specify.

(f) Member of a Committee or Board, statutory or non-statutory, constituted by the Government; and

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

(i) a local authority in the State of Karnataka;

(ii) a statutory body or a corporation (not being a local authority) established by or under a State or Central Act, owned or controlled by the State Government and any other board or corporation as the State Government may, having regard to its financial interest therein, by notification, from time to time, specify;

(iii) a company registered under the Companies act, 1956, in which not less than fifty one per cent of the paid up share capital is held by the State government, or any company which is a subsidiary of such company;

(iv) a society registered or deemed to have been registered under the Karnataka Societies Registration Act, 1960, which is subject to the control of the State Government and which is notified in this behalf in the official Gazette;

(v) a co-operative society;

(vi) a university;

Explanation.- *In this clause, "co-operative society" means a co-operative society registered or deemed to have been registered under the Karnataka Co-operative Societies Act, 1959, and "university" means a university established*

or deemed to be established by or under any law of the State Legislature.

8. On plain reading of the above said provision, it not only encompasses all the public servants but also under Section 2(g) encompass the other employees of various other statutory bodies, corporations established by or under the State.

9. It is not in dispute that the petitioners are working under the municipality as the employees of the municipality. Therefore, he also falls under the definition of public servant particularly under Section 2(g) of the Act. The learned counsel for the appellant strenuously contends before the Court that in view of the separate Rules i.e., the Karnataka Municipalities (Recruitment of Officers and Employees) Rules, 2010, Rule 11 says that wherever the word "government servants" are used there the employees of the municipalities has to be read in

to, that's why the government servant wording is not used in Karnataka Lokayukta Act but it is a public servant the definition has been given. So whether, he is working as a "government servant" by said substitution of rule 11 or he is working under any "public authorities" or any other statutory authorities they ail categorized as public servants as per Section 2 (12) of the Karnataka Lokayukta Act. Therefore, the petitioners also fall under the category of public servants as per the above said provision irrespective of the nomenclature given to him under Rule 11 of the Karnataka Municipalities (Recruitment of Officers and Employees) Rules, 2010.

10. Now, we have to examine the provision under Section 12 of the Karnataka Lokayukta Act in order to resolve the above said submission made by learned counsel, the said provisions reads as under:

> ***"12. Reports of Lokayukta, etc.-*** *(1) If, after investigation of any action involving*

a grievance has been made, the Lokayukta or an Upa-lokayukta is satisfied that such action has resulted in injustice or undue hardship to the complainant or to any other person, the Lokayukta or an Upa-lokayukta shall, by a report in writing, recommend to the competent authority concerned that such injustice or hardship shall be remedied or redressed in such manner and within such time as may be specified in the report.

(2) The competent authority to whom a report is sent under sub-section (1) shall, within one month of the expiry of the period specified in the report, intimate or cause to be intimated to the Lokayukta or the Upa-lokayukta the action taken on the report.

(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 relevant documents, materials and other evidence to the competent authority.

(4) The competent authority shall examine the report forwarded to it under subsection (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.

(5) If the Lokayukta or the Upa-lokayukta is satisfied with the action taken or proposed to be taken on his recommendations or findings referred to in sub-sections (1) and (3), he shall close the case under information to the complainant, the public servant and the competent authority concerned; but where he is not so satisfied and if he considers that the case so deserves, he may make a special report upon the case to the governor and also inform the competent authority concerned and the complainant.

(6) The Lokayukta shall present on or before 31st October of every year, a consolidated report on the performance of his functions and that of the Upa-lokayukta under this Act to the Governor.

(7) On receipt of the special report under sub-section (5), or the annual report under sub-section (6), the governor shall cause a copy thereof together with an explanatory memorandum to be laid before each house of the state Legislature.

(8) The Lokayukta or an Upa-lokayukta may at his discretion make available, from time to time, the substance of cases closed or otherwise disposed of by him which may appear to him to be of general, public, academic or professional interest in such manner and to such persons as he may deem appropriate."

11. The above provision in the Lokayukta Act shows that, if any complaint is lodged against any public servant to Upa-lokayukta by anybody,

including the disciplinary authorities or the government or even the action to investigate suo-motu taken up by Upa-lokayukta then under Sub-section (3) of Section 12, the Lokayukta after investigation or preliminary enquiry regarding the allegations made against a public servant if he is satisfied that such allegations, either wholly or partly true, then he shall make a report in writing, communicating his findings and recommendations along with relevant documents, materials and other evidence to the competent authority. Sub-clause (4) says that the competent authority shall examine the report forwarded to 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. The wordings used in Sub-Section (4) of Section 12 i.e., action taken or proposed to be taken falls for interpretation by us in this particular petition.

Of-course, it goes without saying that, if the Government itself is the disciplinary authority, the Government can directly take action by accepting the report and initiate further disciplinary enquiry either by itself under the relevant CCA Rules or it can entrust the matter to Upa-lokayukta for disciplinary enquiry. After receiving further report from Upa-lokayukta government can act upon the report and take further action to impose penalty as per CCA Rules.

12. If the Government is not the competent authority in such an eventuality whether it is incumbent upon the Government to send the investigation or enquiry report submitted by the Upa-lokayukta under Section 12(3) to the concerned disciplinary authorities either to take action, to proceed with the disciplinary action or to intimate the Upa-lokayukta the action taken are proposed to be taken against its employee on the

basis of the report. In order to understand this anomaly the court has to go through the Rule 14-A of CCA Rules. Before that as we have categorically examined the Municipalities Rules noted above, the CCA Rules of the Karnataka Civii Services Rules has been adopted with certain modification as per Rule 11(1) of the Karnataka Municipalities (Recruitment of Officers and Employees) Rules, 2010, which reads as follows:

> ***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 shall apply subject to modifications specified in Schedule III.*

Proviso to this, is also there underneath said provision which reads as follows:

> *"And other rules, made or deemed to have been made under the Karnataka State*

Civil services, Act, 1978, orders and special orders of Government issued from time to time, and adopted in those Rules shall mutatis mutandis apply to the employees appointed under these rules subject to modifications made in these rules. Provided that the expressions "government servant(s)", "Head of the department/s", "Head of the Offices", "The government" or/and "the Governor", wherever they occur in the Acts and Rules enumerated above, shall respectively mean "Municipal employee(s)" "Deputy Commissioner or Director of Municipal Administration or any of his subordinates notified by Government from time to time, as the case may be", Municipal Commissioner in respect of City Municipal Council and Chief Officer in respect of Town Municipal and Town Panchayat in the State", and "Government in Urban Development Department"

13. Of-course, by reading into these provisions with proviso, it clearly discloses that wherever the wordings used as government in the

CCA Rules that should be replaced by the authorities mentioned in the proviso. That means to say, this rule clearly indicates that the rule wants to replace the government as a disciplinary authority with that of authorities under the Municipalities Act as appointing authorities, removing authorities or the disciplinary authorities. There is no dispute so far as this aspect is concerned, that Municipal Administration is disciplinary authority so far as the petitioners are concerned.

14. Now coming back to Rule 14-A of the Karnataka Civil Services (CCA) Rules, 1957, which is also mutatis mutandis applicable to the Municipal Employees. Rule 14-A is the relevant provision, which reads as follows:

> *"14-A. Procedure in cases entrusted to the Lokayukta.- (1) The provisions of sub-rule(2) shall, notwithstanding anything contained in Rules 9 to 11-A and*

13, be applicable for purposes of proceedings against Government Servants whose alleged misconduct has been investigated into by the Lokayukta or an Upa-lokayukta either under the provisions of the Karnataka Lokayukta Act, 1984 or on reference from Government or where offences alleged against them punishable under the Prevention of Corruption Act, 1947, or the Prevention of Corruption Act, 1988 has been investigated by the Karnataka Lokayukta Police before 21st day of December, 1992.

(2) (a) where an investigation into any allegation against.-

(i) a member of the State Civil Services Group 'A' or group 'B', or

(ii) a member of the State Civil Services Group 'A' or group 'B' and a member of the State Civil Services Group 'C' or Group 'D', or

(iii) a member of the State civil Services Group 'C' or group 'D' the Lokayukta or the Upa-lokayukta or,

(before the 21-12-1992), the Inspector-General of Police of the Karnataka Lokayukta police is of the opinion, that disciplinary proceedings shall be taken, he shall forward the record of the investigation along with his recommendation to the Government and the Government, after examining such record, may either direct an inquiry into the case by the Lokayukta or the Upa-lokayukta or direct the appropriate Disciplinary Authority to take action in accordance with Rule 12.

(b) Where it is proposed to hold an inquiry into a case under clause (a) the enquiry may be concluded either by the Lokayukta or the Upa-lokayukta, as the case may be, or an officer on the staff of the Lokayukta authorized by the Lokayukta or the Upa-lokayukta to conduct the inquiry.

Provided that the inquiry shall not be conducted by an officer lower in rank than that of Government Servant against whom it is held:

Provided further that an inquiry against a government servant not lower in rank than that of a deputy Commissioner shall not be conducted by any person other than the Lokayukta or the Upa-lokayukta or an Additional Registrar (Inquiries).

Provided also that an officer on the staff of the Lokayukta authorities to conduct an inquiry under clause (b) shall not have the power to appoint another officer to conduct it wholly or in part.

(c) The Lokayukta, the Upa-lokayukta or the officer authorized under clause (b) to conduct an inquiry shall conduct it in accordance with the provisions of Rule 11 insofar as they are not inconsistent with the provisions of this rule and for that purpose shall have the powers of the disciplinary Authority referred to in the said rule.

(d) After the inquiry is completed, the record of the case along with the findings of the Inquiring Officer and the

recommendation of the Lokayukta or the Upa-lokayukta as thecase may be, shall be sent to the Government.

(e) On receipt of the record under clause (d) the Government shall take action in accordance with the provisions of Rule 11-A and in all such cases the government shall be the Disciplinary Authority competent to impose any of the penalties specified in Rule 8.

(3) Nothing in sub-rule (1) shall be applicable to members of the Karnataka Judicial Services or Government Servants under the administrative control of such members or of the High court of Karnataka."

15. On careful perusal of the said provision, Rule 14-A(2) is the relevant provision so far as this case is concerned. Rule (2) (a) Sub-clause (i) to (iii) discloses that, all the officers in group-A, B, C and D are covered. If the disciplinary authority wants to initiate proceedings, in such an

eventuality, the authority shall forward the record for investigation along with the recommendation to the Government and the Government after examining such record may either direct an enquiry into the case by the Lokayukta or the Upa-lokayukta or direct the appropriate disciplinary authority to take action in accordance with Rules 12 of the CCA Rules. Therefore, this provision only contemplates that only after the government receives any report either from the disciplinary authority or from the Lokayukta, in such an eventuality for the purpose of considering the said report under Rule 12 only, the government can direct the disciplinary authorities to take action in accordance with law under Rule 12 of the CCA Rules.

16. Rule 12 of the Karnataka Civil Services (CCA) Rules 1957, which reads as follows:

12. ***Procedure for imposing minor penalties.-****(1) subject to the provisions of sub—Rule(3) of rule 11-A, no order imposing on a Government Servant any of the penalties specified in clauses (i) to (iv-a) of Rule 8 shall be made except after.-*

(a) informing the government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehavior on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 11, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary;

Provided that no order imposing a penalty of withholding increments with

cumulative effect shall be made without holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 11.

(c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehavior, and

(e) consulting the Commission where such consultation is necessary.

(2) The record of the proceedings in such cases shall include.-

(i) a copy of the intimation to the Government Servant of the proposal to take action against him;

(ii) a copy of the statement of imputations of misconduct or misbehavior delivered to him.

(iii) his representation, if any;

(iv) the evidence produced during the inquiry;

(v) the advice of the Commission, if any;

(vi) the finding on each imputation of misconduct or misbehavior and

(vii) the orders on the case together with the reasons therefore.

17. On meaningful reading of the above said provision, the said Rule 12 is applicable only after the disciplinary enquiry is conducted and the delinquent employee was held to be guilty of the allegations made against him and this provision empowers the disciplinary authority to impose the penalties upon him.

18. Therefore, it goes without saying that the said provision is applicable only after receipt of the report of the disciplinary enquiry either from the disciplinary authority or from the Upa-lokayukta. Therefore, the arguments addressed by the learned

counsel that the Government cannot entrust the matter to the Upa-lokayukta and receive any report with regard to the disciplinary enquiry is not acceptable on careful harmonious reading of the provisions under Lokayukta Act, with the Municipalities Rules as noted above.

19. In this background, some of the relevant provisions considered by this Court is also to be looked into.

20. In a decision of this Court in ***W.P.No.2581/2016*** between ***S.V.Ramesh Vs. State of Karnataka*** almost similar point fell for consideration. At paragraph No.15 of the said judgment, after considering the provisions of the Lokayukta Act, and a separate Rule applicable to BWSSB, the Court has held in the following manner:

> *"15. From the aforementioned discussion, it is amply clear that by virtue of the Notifications dated 12.10.1982 and*

1.3.2006 mentioned supra, the CCA Rules are made applicable to the BWSSB officials also. Thus aforementioned provisions of CCA Rules clearly depict that disciplinary action can be initiated against the petitioner (BWSSB employee) without taking consent of BWSSB under the provisions of Lokayukta Act. Morevover as clarified by us in the aforementioned paragraphs, the petitioner falls within the definition of 'public servant' as found under Section 2(12)(g) of the Karnataka Lokayukta Act. Hence, there is no hurdle for Upa-Lokayukta to investigate into the matter and to submit the report under Section 12(3) of the Karnataka Lokayukta Act. So also there is no bar for the State Government to entrust the matter for disciplinary enquiry to Upa-Lokayukta as per the provisions of Section 12(4) of the Karnataka Lokayukta Act."

21. The above said paragraph is read in proper perspective, it goes without saying that all the employees who are covered under Section 2(12)(g) are to be considered as public servants

and there is no bar for the State government to entrust the matter for disciplinary enquiry to Upa-lokayukta in respect of those public servants who are referred to under Section 2(12)(g) as per the provision of Section 12(4) of the Karnataka Lokayukta Act.

22. In another ruling cited by Mr.J.S.Shetty for petitioners, in W.P.No.10999-11006/2017, vide judgment dated 15.06.2019, this Court has made an observation with reference to some GTTC employees in fact in our opinion the above said judgment cited by the learned counsel is not in a straight jacket manner applicable to this particular case. At paragraph No.7 of the judgment, the Court has observed in the following manner:

> *"7. Learned counsel for the petitioners would submit that the action of Respondents No.2 and 3 entrusting the enquiry to the Upa Lokayukta is wholly illegal and without jurisdiction. The*

provisions of CCA Rules would have no application to the petitioners as they have their own Certified Standing Orders, which deals with the disciplinary matters and procedure for conducting enquiry against the employees of GTTC. Further it is submitted that the Upa Lokayukta, on a complaint received has investigated and submitted his report. It is not a complaint referred to the Lokayukta by the Government or the second respondent. On submission of the report under Section 12(3) of the Lokayukta Act by the Upa Lokayukta, the second respondent could not have entrusted the enquiry to the Upa Lokayukta. He relies upon Section 3 of CCA Rules in support of his submission. It is his contention that there is no provision for entrusting the enquiry to the Upa Lokayukta either under the certified Standing Orders of GTTC or in the Rules and Regulations of GTTC."

23. This Court was of the opinion that when the separate certified standing orders or Rules govern a particular employee, if that particular

rules or standing orders does not provide any empowerment to the disciplinary authorities to refer the matter to any other instrumentaiities like Upa-lokayukta to conduct disciplinary enquiries in such an eventuality the entrustment of the enquiry by such authorities, violates the specific rules under the special rules governing those employees. Therefore, the provision under Section 12(4) was not at all found to be applicable in the said case.

24. In fact almost similar point fell for consideration before this Court in a decision reported in ***ILR 2018 Karnataka 2347*** between ***Gopal Hanumanth Kase Vs. The State of Karnataka***. This Court after in detail discussing the provisions under Section 12(3) and also Section 12(4) of the Act has come to the conclusion that, the report submitted by the Upa-lokayukta under Sub-clause (3) of Section 12 recommending initiation of disciplinary action against the

petitioner who was also a employee of the municipal corporation i.e., who was working as Commissioner, City Municipal Counsel, Jamakhandi. After considering the municipalities Rules as noted above, the Court has come to the conclusion that, once perusal of the contents of the report made by Lokayukta under Section 12(3) of the Act and after satisfying itself government takes a decision to refer the matter to Lokayukta for disciplinary enquiry and the same is not against any law, the government was well within its power to entrust the Lokayukta for further disciplinary enquiry. The Court also has relied upon various rulings to come to such a conclusion.

25. Under the Lokayukta Act what is to be looked into is the wordings used in Section 12 or under Section 2(4) about who is the competent authority. Section 2(4) reads as follows:

*"**2. Definition.-** In this Act, unless the context otherwise requires.-*

(1) xxxx

(2) xxxs

(3) xxxx

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

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

(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) <u>in the case of any other public servant, such authority as may be prescribed</u>;

26. The said provision particularly Section 2(4)(d), it says that in the case of other public

servant such authority as may be prescribed. If we read this provision in consonance with Rule 3 i.e., the Karnataka Lokayukta Rules, 1985 which says that, who is the competent authority, which reads as follows:

> *"**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 Competent Authority."*

27. Therefore on harmonious reading of section 2 sub clause (4) (d) with Rule 3, they clearly disclose that, the Government is the competent authority to take action against public servants referred to under Sub-clause (d) of Clause 4 to Section 2. Therefore, whatever may be the nomenclature that has been used in other enactment prescribing them as disciplinary authorities that cannot override the definition of competent authority as defined under the Karnataka

Lokayukta Act and Rules, unless and until the said provisions are declared as ultra virus are the said provisions or against the other principles of law. Therefore, for all practical purposes, if any matter comes within the purview of Karnataka Lokayukta Act, the Courts are bound to ascertain the exact definition of the relevant wordings with reference to the said Act and not with reference to any other enactment.

28. Revisiting the provision under Section 12(3) and (4), therein the wordings used are "competent authority" and not a "disciplinary authority" therefore, for all practical purposes the competent authority as referred to in sub clause (4) of Section 12 is the Government, which has the power under the said provision either directly to take action or propose any action to be taken against a public servant who is covered under Section 2(12)(g) of the Act.

29. Before referring to the sanctity of appointing the Chief Justices and Judges of the High Court as Lokayuktha and Upalokayuktha, we may feel it just and necessary to note here the object of introducing the Lokayuktha institution.

30. His Excellency, President of India vide notification dated 05.01.1966 appointed the Administrative Reforms Commission for addressing "Problems of Redress of citizens' Grievances" interalia with the object for ensuring the highest standards of efficiency and integrity in the public services, for making public administration a fit instrument for carrying out the social and economic policies of the Government and achieving social and economic goals of development, as also one responsive to people. The Commission was also asked to examine the various issues including the problems of redress of Citizens' Grievances mainly concentrating with regard to the eradicating

corruption which was rampant. The Commission after elaborate discussion suggested for establishment of Lokpal in Centre and Lokayuktha in States holding that the hands of Governments would be strengthened by such institutions. It was considered that, the public opinion has been agitated for a long time over the prevalence of corruption in the administration and it is likely that the cases coming up before Lokayuktha, which is an independent authority, might involve in dealing with the allegations of corrupt motive and favouritism in respect of Government authorities and as well as public servants. Therefore, the institution should be so strong to deal with such cases. The Commission also suggested as the Ministers, Secretaries and other persons occupying highest position would also come under the purview of Lokayuktha, therefore, the said institution must be headed by a strong, dedicated and equipped personality. Perhaps, that may be the reason the retired Chief Justices and

Judges of the High Court are preferred for appointment of Lokayuktha and Upalokayuktha. It is also to be a notable point that, the persons who occupy such position should be independent and impartial. Their investigations and proceedings should be conducted in a private and informal in character. The appointment of Lokayuktha and Upalokayuktha, therefore is purely non political and their status is compared with the highest judicial functionaries in the Country, they should deal with the matters in the discretionary fields involving acts of injustice, corruption or favourtism. Therefore, the proceedings should not be subject to judicial interference and they are given the maximum latitude and powers in obtaining information relevant to their duties. Bearing in mind these essential features of the institutions, the persons who occupy such highest positions who are shown integrity to the institutions for which they have

worked, are selected as Lokayuktha and Upalokayuktha.

31. In the above said backdrop, the object and purpose and also considering the status of Lokayuktha and Upalokayuktha were selected from the judicial system has to be borne in mind in order to ascertain the veracity of the powers given to the government under the Lokayuktha Act has to be tested. Under the Act, the Upalokayuktha after considering the allegations made against any public servant or a government servant and after examining the materials provided and collected by him and after giving opportunity to the delinquent employee, sends a report to the government under Section 12(3) of the Act. The said report would be sent by Upalokayuktha after satisfying himself that the allegations are wholly or partially true and after expressing his satisfaction he would send a report under the above said provisions. Therefore, when a

highest functionary of the said institution and particularly after taking into consideration the above said criterias, sends a report, such report should not be in any manner taken by any person in a casual manner, lot of sanctity and weight is attached to such reports. Perhaps that may be the reason that if a report is submitted by Lokayuktha and Upalokayuktha to the Government, if it is sent to any other disciplinary authority or to the concerned department, there is chances of those authorities sitting over the opinion of Lokayuktha and exercising their powers to nullify the effect of the said report of Upalokayuktha by simply sending action taken report, even under certain circumstances casually saying that no action is necessary. Therefore, the government which is the highest super power when compared to all other departments of the government which acts as parent prageria of almost all the employees of the government department and other public servants

who work in various other public institutions, to receive the report submitted by Lokayuktha u/S 12(3) and also empowered to entrust the matter to the Lokayuktha if any further disciplinary enquiry to be conducted.

32. It is also to be noted that, if the government itself is the disciplinary authority, it itself can take appropriate action against the delinquent employee by conducting enquiry by itself or referring the matter to Upalokayuktha for further disciplinary enquiry under the provisions of CCA Rules.

33. There is no bar under any other provision of law because Rule 14(a)(ii)(iii), which we have already referred to, the Government has got power to refer the matter to disciplinary authorities concerned only for the purpose of imposing punishment u/s 12 to the disciplinary authorities after receiving the report from the Upalokayuktha,

particularly after the disciplinary enquiry is conducted and report is submitted with recommendation by the Lokayuktha. So, this will clarify the situation that under Rule 14(A)(iii), the Government has got power to receive the disciplinary enquiry report and thereafter only it can refer the same to the disciplinary authorities to impose penalty when the Government itself is not the disciplinary authority to impose punishment. Therefore, till that point of time under section 12 sub-section (4), the government has all the powers which the disciplinary authority has got to refer the matter to the Upa-lokayukta for to conduct the disciplinary enquiry and to report back to the Government.

34. Therefore, looking to the above said relevant provisions and the rulings we are of the opinion that there is absolutely no illegality or irregularities committed by the government in

receiving the preliminary investigation report under Section 12(3) of he Act and thereafter again referring the matter to the Upa-lokayukta for conducting the disciplinary enquiry. Hence, the writ petition fails and the same is liable to be dismissed, accordingly dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

yan/EM/bvv