IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JUNE, 2021

PRESENT

THE HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE MR. JUSTICE NATARAJ RANGASWAMY

WRIT PETITION NO.29212/2017 (S-KAT)

C/W WRIT PETITION NO.29213/2017 (S-KAT)

WRIT PETITION NO.38938/2018 (S-KAT)

WP NO 29212 OF 2017

BETWEEN

1 . THE HON'BLE LOKAYUKTHA
M S BUILDING
DR AMBEDKAR VEEDHI
BANGALORE- 560001

2 . THE ADDITIONAL REGISTRAR ENQUIRIE -II
KARNATAKA LOKAYUKTA
M S BUILDING
BANGALORE - 560001
REPRESENTED BY REGISTRAR LOKAYUKTA

...PETITIONERS

(By SRI : V.S.ARBATTI, ADVOCATE)

AND

1 . SRI PRAKASH T V
S/O SRI VIRUPAKSHAPPA T
AGED ABOUT 53 YEARS
WORKING AS ASSISTANT COMMISSIONER
JUNIOR SCALE UNDER RULE 32
SPECIAL LAND ACQUISITION OFFICER
UPPER TUNGA PROJECT
MAGOD ROAD,

RANEBENNUR
HAVERI DISTRICT

2 . STATE OF KARNATAKA
REPRESENTED BY ITS
PRINCIPAL SECRETARY
REVENUE DEPARTMENT
M S BUILDING
BANGALORE – 560001

...RESPONDENTS

(By SRI : VIJAYA KUMAR, ADVOCATE FOR R1
SMT SHILPA S GOGI, HCGP FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DTD: 19.04.2017 PASSED BY THE HON'BLE KARNATAKA ADMINISTRATIVE TRIBUNAL AT BANGALORE IN APPLICATION NO.2199/2016 AS PER ANNEXURE-A AND ETC.

WP NO 29213 OF 2017

BETWEEN

1 . THE HON'BLE LOKAYUKTHA
M S BUILDING
DR AMBEDKAR VEEDHI
BANGALORE- 560001
REPRESENTED BY REGISTRAR LOKAYUKTA

2 . THE ADDITIONAL REGISTRAR ENQUIRIE -II
KARNATAKA LOKAYUKTA
M S BUILDING
BANGALORE - 560001
REPRESENTED BY REGISTRAR LOKAYUKTA

..PETITIONERS

(BY SRI : V S ARBATTI, ADVOCATE)

AND

1 . SRI MANJUNATH R BALLARI
S/O SRI RAGHAVENDRA
AGED ABOUT 37 YEARS
WORKING AS
UNDER SECRETARY TO

GOVERNMENT OF KARNATAKA
ON DEPUTATION
WORKING AS TAHSILDAR
TALUK OFFICE, RAITABHAVANA
DAVANGERE
RESIIDNG AT TAHSILDAR QUARTERS
OPP TO RATNAMMA HOSTEL
DAVANGERE
DAVANGERE DISTRICT

2 . THE STATE OF KARNATAKA
REPRESENTED BY ITS PRINCIPAL SECRETARY
REVENUE DEPARTMENT
M S BUILDING
BANGALORE – 560001

…RESPONDENTS

(BY SRI : VIJAYA KUMAR, ADVOCATE FOR R1
SMT SHILPA S GOGI, HCGP FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 19.4.2017 PASSED BY THE HON'BLE KARNATAKA ADMINISTRATIVE TRIBUNAL AT BANGALORE IN APPLICATION NO.2198/2016 VIDE ANNEXURE-A AND ETC.

WP NO 38938 OF 2018

BETWEEN

1 . THE REGISTRAR
KARNATAKA LOKAYUKTHA
M.S.BUILDING,
DR. B.R.AMBEDKAR ROAD,
BANGALORE-01

...PETITIONER

(By Sri : VENKATESH S ARBATTI, ADVOCATE)

AND

1 . THE STATE OF KARNATAKA
REPRESENTED BY ITS PRINCIPAL SECRETARY,
HOME DEPARTMENT,
VIDHANA SOUDHA,
BANGALORE-01

2 . THE DIRECTOR GENERAL AND
INSPECTOR GENERAL OF POLICE,
NO.2, NRUPATHUNGA ROAD,
BANGALORE-560 002

3 . SRI. RAMAKANTH Y HULLAR
S/O SRI YELLAPPA,
CIRCLE INSPECTOR OF POLICE,
NARGUND,
GADAG DISTRICT
RESIDING AT NO.108/9,
SBI COLONY, POLICE HQ ROAD,
DHARWAD

...RESPONDENTS

(By SMT SHILPA S GOGI, HCGP FOR R1 AND R2
SRI SATISH M.DODDAMANI, ADV. FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DTD 29.05.2018 PASSED BY THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL AT BANGALORE IN APPLICATION NO.108/2017 VIDE ANNEXURE-A AND ETC.

THESE WRIT PETITIONS COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP AND HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 10.06.2021, THIS DAY, **SATISH CHANDRA SHARMA J.,** PRONOUNDED THE FOLLOWING:

ORDER

Regard being had to the similitude in the controversy involved in all the three cases, they were heard analogously together and a common order is being passed.

2. The facts of WP.No.29212/2017 are narrated as under:

The present petition has been filed by the Lokayuktha Establishment being aggrieved by the order dated 19.4.2017 passed in Application No.2199/2016 by the Karnataka State Administrative Tribunal, Bangalore clubbed with Application No.2198/2016, by which the Tribunal has quashed the order dated 6.9.2013 i.e., the order by which the State Government has entrusted the enquiry against the respondent No.1 under Section 14-A of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. The Tribunal has also quashed the subsequent charge sheet issued by the Lokayuktha dated 8/20.4.2015.

3. The facts of the case reveal that a large scale mining scam took place in the State of Karnataka in Bellary District and other places and by an order dated 12.3.2007 the State of Karnataka referred the issue of alleged illegal mining to the Lokayuktha Establishment for investigation under Section 7(2-A) of the Karnataka Lokayuktha Act, 1984 (hereinafter referred to as the Act of 1984). The Lokayuktha submitted its first report on 18.12.2008 and in Chapter IV of the report, it was observed that although mines/forest departments were issuing permits in the names of lessees or their agents for transportation, but in reality those permits were being used by raising contractors and other persons to transport ores from areas totally unconnected with

original lease and the departmental officials were hand in glove with the persons carrying out the illegal mining.

4. Another report was submitted by the Lokayuktha Establishment on 27.7.2011 and it was reported by the Lokayuktha that a Mafia type of operations in relation to the illegal mining and transportation of mined ore is taking place with full connivance of the department of Police, RTO, Mines, Forest, Revenue, Commercial Taxes, KSPCB, Labour, Weight and Measures Department and others.

5. It has been further stated by the petitioners that the Income Tax Department also conducted raids during the year 2010 and seized the material from the premises of one Mr.Karapudi Mahesh and there was an involvement of as many as 617 officials of various cadre and connected departments. The documents shared with the Lokayuktha reflected that bribe to the tune of Rs.2,46,62,377/- was paid under the head "departmental expenses" and a record was maintained by Karapudi Mahesh in electronic form. The Lokayuktha Establishment conducted a thorough probe in the matter and submitted a report holding that forged and fake permits were issued by the Mines and Geology Department, Andhra Pradesh and they were used for the illegal

transportation of stolen iron ore brought from various places viz., forest land, revenue land and also from regular leases in excess quantity than permitted in Karnataka from Hospete, Sandur and Bellary and other Taluks and money to the tune of Rs.1,11,13,394/- was paid for procuring such permits. The report also reflected involvement of large number of government servants i.e., 617 officials as mentioned in the report and based upon the final report submitted by the Lokayuktha Establishment, the Government of Karnataka constituted a High Level Committee comprising of one Sri.K.Jairaj, Additional Chief Secretary as Chairman and four other Senior IAS Officers as Members.

6. The Government of Karnataka by an order dated 6.9.2013 entrusted a disciplinary enquiry to be held against the officials named in the Government Order to the Karnataka Lokayuktha and Upalokayuktha in exercise of the powers under Rule 14-A and 214 of the Karnataka Civil Services (Classification, Control and Appeal) Rules of 1957 (hereinafter referred to as the CCA Rules of 1957). The Lokayuktha Establishment nominated 2 Additional Registrars of Enquiries as Enquiry Officers and a charge sheet was issued to the respondent. The respondent, being aggrieved by the order dated 6.9.2013 in entrusting the disciplinary enquiry to the Lokayuktha and the charge sheet dated

8.4.2015, has approached the Karnataka Administrative (hereinafter referred to as the Tribunal) and the Tribunal has quashed the order entrusting the disciplinary enquiry and the charge sheet also.

7. The learned counsel for the petitioners/Lokayuktha has vehemently argued before this Court that the order entrusting the disciplinary enquiry and the charge sheet could not have been quashed by the Tribunal on the ground that no opportunity of hearing was granted to the government servant by the Lokayuktha Establishment while submitting a report to the State Government. He has stated that the enquiry conducted by the Lokayuktha Establishment was a fact finding enquiry/preliminary enquiry and based upon the material on record it was well within the domain of the State of Karnataka under Rule 14-A of the CCA Rules of 1957 to entrust the matter to the Lokayuktha for holding a disciplinary enquiry. He has stated that only after a charge sheet is issued, the employee in question has a role to play and he has a right to defend himself in the enquiry proceedings to be initiated against him. It has been stated that all material was served to the respondent/employee along with the charge sheet based upon which the charges were framed and the Rules provide for grant of full opportunity to the employee during the course of

departmental enquiry. Hence, by quashing the charge sheet at a preliminary stage, such a large scale scam of iron ore wherein large amounts were paid as bribe cannot be washed out by a single stroke of pen.

8. The learned counsel has also argued before this Court that a reference was made by the State Government under Section 7(2-A) of the Act of 1984 and Section 7(2-A) does not provide for grant of opportunity as provided under Section 12 of the Act of 1984. He has stated that under Section 7(2-A), once the matter is referred by the State Government to the Lokayuktha Establishment, the Lokayuktha Establishment has to proceed in the matter as a fact finding authority and there was no violation of any statutory provision of law by the Lokayuktha Establishment while conducting the fact finding enquiry. He has stated that the fact finding enquiry is a preliminary enquiry and merely because the respondent/employee was not granted an opportunity of hearing, the Tribunal has erred in law and in facts in quashing the departmental enquiry especially in the light of the judgment delivered in the case of **Union of India and Another v. Kunisetty Satyanarayana,** reported in AIR 2007 SC 906**.** He has also argued that the Tribunal has no jurisdiction to deal with the report of the Lokayuktha under Section 12(3) of the Act of

1984 and there is no provision/procedure to grant an opportunity to the respondent/employee to explain his conduct in an enquiry under Section 7(2-A) of the Act of 1984 and therefore, the order passed by the Tribunal, which is contrary to the statutory provisions governing the field deserves to be quashed.

9. Learned counsel for the petitioners/Lokayuktha has vehemently argued before this Court that the Tribunal has quashed the charge sheet and the action of the Tribunal is amounting to giving a premium to the alleged dishonest officers numbering 617 of the State of Karnataka and the mining scam in the State of Karnataka was one of the biggest mining scam in the Country and such persons allegedly involved in it cannot be permitted to go scot-free keeping in view the peculiar facts and circumstances of the case.

10. He has vehemently argued that the question of grant of an opportunity of hearing and principles of natural justice will come into play only when a regular departmental enquiry is held and the respondent/employee will have all the rights and opportunity as provided under the CCA Rules of 1957 during the course of departmental enquiry/hearing.

11. Learned counsel for the Lokayuktha Establishment has argued before this Court that the Tribunal while quashing the charge sheet has observed that the investigating officer who conducted the preliminary fact finding enquiry at the behest of the Lokayuktha has not issued any show cause notice and no opportunity was given by the Lokayuktha to the employee to explain his conduct. He has stated that the Tribunal has failed to appreciate the fact that the report under Section 12(3) of the Act of 1984 was arising out of the proceedings under Section 7(2-A) of the Act of 1984 and therefore, the requirement of Sections 8 and 9 of the Act of 1984 including the issuance of notice is not applicable to the proceedings under Section 7(2-A) of the Act of 1984.

12. To bolster his submissions the learned counsel for the petitioners has placed reliance upon the following judgments;

1) **Dr.K.Chowdappa v. State of Karnataka and others, reported in ILR 1990 KAR 798;**
2) **Gopalachari v. State of Karnataka, reported in 2012(2) KAR.L.J., 211 (W.P.42135-140/2011, dated 12.12.2011); and**
3) **Gopalachari v. State of Karnataka, W.A.No.1288-92/2012, dated 24.4.2013 (DB).**

13. He has also argued that the Tribunal was not having any jurisdiction to entertain the challenge in respect of the order

passed by the Lokayuktha and the remedy available to the respondent/employee was to approach this Court. He has placed reliance upon a judgment delivered in the case of **J.P.Prakash v. State of Karnataka and another, W.P.No.5361/2016, decided on 6.4.2016.**

14. Learned counsel for respondent No.1 has vehemently argued before this Court that it was mandatory to follow the provisions prescribed under Section 9 the Act of 1984 even though a reference was made under Section 7(2-A) of the Act of 1984. He has stated that the issue is no longer res integra in the light of the judgment delivered by the Division Bench of this Court in the case of **Sri B S Yeddyurappa v. The Lokayukta of Karnataka,** W.P.No.44071/2011, decided on 7.3.2012. He has placed heavy reliance upon paragraphs 27 and 28 of the aforesaid judgment and the same reads as under;

> "27. In the decision reported in ILR 1990 Kar 223 (N.Gundappa v. State of Karnataka), it was held that the investigation by Lokayukta is a quasi judicial power and the authority shall follow the rules of Natural justice. Therefore, it was necessary for the lokayukta to send a copy of the complaint to the petitioner and to the Competent Authority and afford an opportunity to the petitioner to offer his comments on the said complaint. Thus, it was held that Clause (a) and (b) of sub-section (3) of section 9 are to be complied with in the manner provided therein. The decision of learned single judge was confirmed by Division bench of this court. Division Bench has held that having regard to the serious consequence

> contemplated under section 13 and 14 of the KL Act, provisions of clause (a) and (b) of sub section (3) of section 7 have to be complied (vide State of Karnataka v. N.Gundappa - reported in ILR 1990 KAR 4188).
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> 28. The scheme of KL Act does not deal with PUBLIC INTEREST matters. Keeping in view the volume of work and public interest, appointment of a commission is more meaningful, as all the persons concerned can take part in the Commission of Enquiry. The Commission is bound to follow the Principles of Natural justice. There cannot be any discrimination in so far investigation of cases under Section 9(1) or under section 7(2A) and compliance of section 9(3)(a)and (b) of the KL Act. Further, there is no material produced by the Lokayukta to establish that the petitioner has done any favour to any of the alleged companies during the period 2007 to 2010. Even during the course of arguments a specific question was put to the learned counsel for the Lokayukta to produce any material to connect the petitioner for the alleged offences, but he was mum. Suspicion cannot be a ground to tarnish the image and reputation of a person who is holding a constitutional post. Courts shall decide on the materials produced by the police or party; whereas the commission has to collect materials by inquisitorial method by investigation; if necessary, to inquire into truth or otherwise of the facts available. The commission of Inquiry Act is perhaps unique in the world where the commission takes the role of investigator, prosecutor, defender and judge of facts, with due safeguards of the rights of the involved parties as in a juridical proceeding, though it is not."

15. In respect of the contention of the petitioners/Lokayuktha Establishment that the report submitted by Lokayuktha dated 27.7.2011 is a report under Section 12(3) of the Act of 1984 and therefore, entrustment has been made by respondent No.2 under Section 14-A of the CCA Rules of 1957, the learned counsel has stated that the High Level Committee report submitted in October 2011 reveals that the report

submitted by the Lokayuktha Establishment was only a report prepared by Dr. U.V.Singh and his team and the same has not been recommended by Lokayuktha Establishment to the Government for implementing it under Section 12(2) of the Act of 1984.

16. He has further contended that under the Act of 1984 the only Section which relates to investigation is Section 9. The investigation has to be conducted by Lokayuktha under Section 9 of the Act of 1984. He has further contended that it has come on record in the High Level Committee report that the Lokayuktha only recommended the report submitted by Dr.U.V.Singh and his team and no notice was issued to respondent No.1 and therefore, it cannot be termed as a report under Section 12(3) of the Act of 1984. Hence, the entrustment under Section 12(4) of the Act of 1984 is bad in law.

17. Learned counsel has further contended that the stand of the petitioners/Lokayuktha Establishment that notice was already issued by respondent No.2 immediately after receipt of the report submitted by Lokayuktha on 27.7.2011, is baseless. He has stated that under Section 9 of the Act of 1984, notice preceding investigation has to be served and in the present case,

no investigation was held under Section 9 or report under Section 12(3) of the Act of 1984 was submitted by the petitioners/Lokayuktha seeking entrustment under Rule 14-A of the CCA Rules of 1957. He has further stated that the notice issued by respondent No.2 is in relation to the report submitted by Lokayuktha on 27.7.2011 before the High Level Committee and therefore, it cannot be treated as a notice by Lokayuktha under Section 9 of the Act of 1984.

18. Learned counsel has further argued that the entrustment under Section 12(4) of the Act of 1984 is bad in law as the statute mandates that respondent No.2 has to verify all relevant records and reports submitted under Section 12(3) of the Act of 1984 and after recording a prima facie satisfaction i.e., in case there is a material to proceed, entrustment order can be passed under Section 14-A of the CCA Rules of 1957. He has also argued that there was no report under Section 12(3) of the Act of 1984 and no further investigation was carried out, hence the State could not have entrusted the enquiry to Lokayuktha. Reliance has been placed upon a judgment delivered in the case of **the Karnataka Lokayuktha v. H.N.Niranjan, in W.P.No.43079/2015, decided on 6.3.2017**.

19. Learned counsel for respondent No.1 has further argued that for conducting an enquiry, documents/material evidence to support charge is necessary otherwise, the departmental enquiry will be a futile exercise. In the present case, there was no sufficient material/documents to support the charges and therefore, the charge sheet was rightly quashed by the Tribunal. Reliance has been placed upon a judgment delivered in the case of **Union of India and another v. Hemraj Singh Chauhan and others,** reported in (2010) 4 SCC 290 as well as in the case of **Chairman of Life Insurance Corporation of India and others vs. A Masilamani**, reported in (2013) 6 SCC 530.

20. Learned counsel Sri.Vikram Huilgol, who has been appointed as an amicus curiae has argued before this Court that the Act of 1984 was brought into force w.e.f., 15.1.1986 and at the time of enactment, Section 7(1) conferred powers upon the Lokayuktha to "investigation any action" in a case "where a complaint involving a grievance or an allegation is made in respect of such action". Section 7(1) applied only in respect of certain specified public servants and Section 7(2) conferred similar powers on the Upa-Lokayuktha to investigate actions where a complaint is filed in respect of public servant not covered

under Section 7(1) of the Act of 1984. He has further argued that Section 7(2) also conferred on the Upa-Lokayuktha powers to initiate suo motu investigation against such public servants, in respect of actions which could have been the subject matter of a grievance or an allegation and therefore, at the time of enactment of Lokayuktha Act of 1984 an investigation could only have been initiated (a) by the Lokayuktha on the basis of a complaint; and (b) by the Upa-Lokayuktha on the basis of a complaint or suo motu.

21. The learned amicus curiae has further stated that at the time of enactment, Section 9(3) of the Act of 1984 provided that the Lokayuktha/Upa-Lokayuktha, in cases, where he proposes to conduct an investigation, after making such preliminary enquiry as he deems fit, provide a copy of complaint to the public servant concerned, and provide an opportunity to the public servant to offer his explanation on the complaint. Therefore, the Lokayuktha/Upa-Lokayuktha was only required to provide a copy of the complaint and an opportunity to respond to the public servant concerned, in cases where an investigation was initiated on the basis of a complaint filed under Section 7(1) or 7(2) of the Act of 1984. If the Lokayuktha initiated a suo motu investigation under Section 7(2) of the Act of 1984, there was no

requirement of complying with Section 9(3) of the Act of 1984. He has further contended that Section 7(2-A) was inserted into the Act of 1984 vide Amendment Act No.31/1986 w.e.f., 16.6.1986.

22. The learned counsel has argued that the possible reason for the omission of any reference to Section 7(2-A) under Section 9(3) is because the Legislature was conscious of the practical difficulties in casting an obligation on the Lokayuktha or Upa-Lokayuktha to hear each and every public servant being investigated, when references are made by the State Government. This is particularly so in cases such as the one on hand, where the Lokayuuktha was required to investigate into an extremely broad and wide-reaching subject, namely, illegal mining in Bellary and other Districts. In such cases, the Lokayuktha's investigation may reveal hundreds – possibly thousands – of names of public servants, and it would be practically impossible, as well as impractical, for the Lokayuktha to call upon each and every public servant whose name may feature in the course of his investigation to provide their comments. If this procedural requirement was to be read into the wording of Section 9(3), it would delay the investigation almost indefinitely and defeat the very object of the Act of 1984.

Therefore, the omission of any reference to Section 7(2-A) under Section 9(3) of the Act of 1984 must be purposively interpreted to be indicative of the intention of the Legislature, namely, to exclude the procedural requirements of Section 9(3) from the purview of investigations initiated upon a reference made by the State Government under Section 7(2-A) of the Act of 1984.

23. The learned counsel has also argued before this Court that principles of natural justice cannot be straight jacketed as held by the Supreme Court in the case of **Chairman, Board of Mining Examination v. Ramjee,** reported in (1977) 2 SCC 256. He has stated that the enquiry conducted by the Lokayuktha Establishment is in the nature of preliminary enquiry and the Hon'ble Supreme Court in catena of judgments has held that it is not mandatory to furnish a report of preliminary enquiry to a government servant. He has also argued that the charge sheet that has been issued to respondent No.1 is supported by documents and the charge has to be proved on the basis of documents annexed along with the charge sheet and on the basis of statement of witnesses listed in the charge sheet. He has stated that the question of quashing the charge sheet at the threshold, in the peculiar facts and circumstances of the case, would amount to giving a premium to the large number of

government servants who were alleged to be hand in glove in respect of the illegal mining and the fact that the government servants are guilty of misconduct or not, can be looked into not by the Tribunal nor by this High Court and it can be looked into in the departmental enquiry that would be conducted pursuant to the issuance of the charge sheet. He has also argued that the charge sheet could not have been quashed in the manner and method it has been done by the Tribunal, keeping in view the judgment delivered in the case of **Kunisetty Satyanarayana (supra)**.

24. Heard the learned counsel for the parties at length and perused the record.

25. The facts of the case reveal that on 12.3.2007 the Government of Karnataka referred several issues relating to illegal mining in the State of Karnataka to the Lokayuktha for investigation under Section 7(2-A) of the Act of 1984. The Lokayuktha investigated the matter and submitted its first report on 18.12.2008. The report included the details of corruption involved in the State. A second report was submitted by the Lokayuktha on 27.7.2011 and one complete Chapter was relating to collapse of administrative and governance system in the State

of Karnataka. It was reported that Mafia type of operations in relation to illegal mining and transportation of mined ore is going on with full swing in connivance with the officials of Police Department, RTO, Mines, Forest, Revenue, Commercial Taxes, KSPCB, Labour, Weight and Measures Department and others.

26. It is pertinent to note that the Income Tax Department also conducted raids during the year 2010 and seized material (soft copy) from the premises of one Mr.Karapudi Mahesh and the information was shared with Lokayuktha. The information revealed involvement of as many as 617 officials of various cadre in different departments. The information also reveals that the bribes were paid to the tune of Rs.2,46,62,377/- and the said amount was shown under the head "departmental expenses" (protection money) by Karapudi Mahesh in the electronic form maintained by him.

27. The Police Wing of the Lokayuktha conducted search also at various places and also prima facie came to a conclusion that the illegal mining and transportation of illegal mined iron ore from Andhra Pradesh has also taken place and a sum of Rs.1,11,13,394/- was paid for procuring such permits in order to carryout illegal transportation of iron one. The report of the

Lokayuktha also reveals that about 32,74,310.88 metric tonne iron ore was illegally transported involving an amount of Rs.40,92,88,860/- and after seizure of the records of Belekeri port by Lokayuktha police on 20.2.2010, the Secretary to the Government, Department of Mines and Geology was also summoned personally by the Lokayuktha Establishment and informed about the illegal transportation of iron ore and the loss which was being caused to the State as Exchequer. In the report submitted by the Lokayuktha, it was recorded that the bribe money was paid to the officials of the Districts of Bellary, Chitradurga, Tumakuru, Bengaluru, Kolar, Davnagere, Haveri, Dharwad, North Canara and the Districts along the Road to Krishnapatnam to get undue favour and approximately an amount of Rs.2,46,62,377/- was paid to 617 officials. The report was submitted by the Lokayuktha to the State Government and a High Level Committee was constituted comprising of Sri.K.Jairaj, Additional Chief Secretary as Chairman and 4 other Senior IAS Officers as Members vide Government Order dated 18.8.2011 with an aim and object to advice the Government in respect of implementation of the observations/recommendations contained in the Lokayuktha report.

28. The extracts of the Lokayuktha report submitted by the Hon'ble Lokayutha, Justice N.Santosh Hegde (Retired Supreme Court Judge) is reproduced as under;

"COLLAPSE OF ADMINISTRATIVE AND GOVERNANCE SYSTEM

There are about 132 Mining leases granted in Bellary district. Out of these mining leases, 99 are in Forest areas and 33 are in Government land (non forest) including Patta lands. There are also large track of Agriculture land having deposition of float iron ore up to a depth of 5 to 10 mtrs. The float ore is also available in the Government Revenue land, Forest land and Patta lands.

2. As per Dr. U.V. Singh's report, there are defunct non renewed leases too in the district. These defunct leases are also the source of illegal ore extraction. Over and above large quantity of iron ores have being extracted illegally from the regular leased areas adopting various modes i.e. by shifting boundary of leases, encroaching in the adjoining Forest and Government land and excess removal from the leased areas. (i.e. in excess of the permitted quantity extracted on nonpayment of royalty). Besides, there were dumps existing near the check dams and other places. There also exist old dumps originated due to mining in the past in Government land and forest lands. Stocks all along the roads in private fields and in Government land are another area for the major sources of illegalities. These places are the target for illegal extraction and unlawful transport of iron ore.

3) Dr. U.V. Singh's report states that he has gone through the records and feedback from the public, NGO's and officials and has noted that from 2003 onwards the float ore mining was started in the patta lands. In this act one of the modes was to "lease" a piece of land or land in entire survey number by the farmer (owners) to a trader, who in turn will do the mining illegally by engaging heavy machinery, manual labour and then sell it to the middle man or to sponge iron ore industries/steel industries and also for export. It is to be noted here that even if floated ore or other deposits or ore are found in patta lands, the mineral being a major mineral and the same belongs to the Government, the export and sale can only be

done under the provisions of M&M (R&D) Act. In Hospet-Sandur-Bellary (BHS) sector, there are unaccounted mushrooming of registered and unregistered iron ore traders. Since last 2 to 3 years, it is observed that due to a big margin of profit in this illegal trade a mafia type of operation have started with **the full connivance and support of Politicians, Officials of the Department of Police, RTO, Mines, Forest, Revenue, Commercial Taxes, KSPCB, Labour, Weight and Measurement department and others.**

4) Due to heavy extraction from the patta land the ore in such areas exhausted fast and by 2005-06 it became scare. The operations then switched over to Revenue Government Land. This process went up to 2007 to 2008. The ore became depleted in these lands too. Then the operation started in Forest land mainly during 2009-10, 2011. Now, the ore is getting depleted in forest areas also. This has resulted in lifting of all accessible dumps and other seized materials. Further there is excess removal from the leased areas by adopting various mode of operation. It has gone to a large extent as could be seen from the seized documents. In the process large amount of bribes were being paid to officials of all cadres at district level. The details are found in Table-1of Chapter-28 of Dr. U.V. Singh's report in this regard.

5) The income tax department had conducted raids in the year of 2010 at various premises of iron ore traders, related companies, individuals, and others. The office of the Lokayukta has approached to the Income Tax Department, Government of India, Bangalore to exchange the information, documents, electronic devices seized by them during the various raids conducted in 2010. After discussion and correspondence a pen drive was provided to this office containing the contents of materials seized from the premises of Sri Karapudi Mahesh (K. Mahesh). Printouts of the said pen drive were taken and examined. On perusal of records it is found that it has hundreds of pages available in the pen drive. These pages along with others have also been cross checked andverified from the printouts available with the Income Tax Department and found to be tallied. It is in the above said background, the report of Dr. U.V. Singh report on payment of bribe by Karapudi Mahesh and his associates to the Government officials is considered and found that the entire administration, especially in the District of Bellary has failed and the officials have failed to discharge their official duty with sincerity and loyalty to the Government.

6) The material provided in the report of Dr. U.V. Singh shows that the information provided by the Director of Income

Tax (Investigation), Bangalore in the form of soft copy (Pen drive) has named 'Karapudi Mahesh' vides his letter no. DIT(Inv.)/BNG/138/2010-11/64 dated 21-02-2011. On examination ofall the records, a list has been prepared by Dr. U.V.Singh's team, consolidating the amount paid at various dates to officials of various departments in the form of bribe for getting undue favour. As per this analysis, it is seen that a total amount of **Rs.2,46,62,377/**-has been paid as bribe (which has been shown as department expenses) to 617 officials of various rank and cadres of all connected departments. It is further stated that this bribing has spread in the Districts of Bellary, Chitradurga, Tumkur, Bangalore, Kolar, Davanagere, Haveri, Koppal, Gadag, Raichur, Gulbarga, Bijapur, Bagalkot, Belgaum, Dharwad, North Canara and districts all along the roads from Bellary to Krishnapatnam. The favour extended against the bribe paid are for non checking of overload, trip sheets, way permits, allowing to lift the waste dumps from all type of lands, allowing to extract floating ores from patta lands, Government Revenue land, Forest land, additional excess removal of ore from regular leases, (more than permitted quantity without creating any record) allowing transportation without payment of royalty, Forest development tax, non adhering to other norms under the Mines and Minerals (Regulation & Development) Act, other Acts and Rules. Table-1 of Chapter-28 prepared by Dr. U.V. Singh's team shows that high level officers are paid huge amount of money, even lower level officers are regularly paid money, depending upon their contribution in helping the illegal mining activities.

7) The report of Dr. U.V. Singh further shows that the records were seized from the premises of Associated Mining Company, Bellary which is inventorised as A/AMC/3 page 15 email from ssb_bellary@yahoo.co.in to kmp.vishwa@yahoo.com, which reveals certain information regarding payment of bribe by M/s. Associated Mining Company has been included in Table 1 of Chapter-28. The mode of payment of bribe has been mentioned in form of names of officials, designations or in code. Dr.U.V.Singh in his report states that the information provided in Table-1 in Chapter-29 of Dr. U.V. Singh's Report is not complete and is restricted to a limited period. The records for the bribes paid before and after the period mentioned is not available. Similarly, the bribes paid by the other group of companies, traders and lessees are also not available. But certainly, the payments from those persons cannot be ruled out.

8) Dr. U.V. Singh's report shows how the racket of extracting, transporting of illegal iron ore without permits or

forged permits from various places of BHS region and other districts by certain groups of people has been evolved. This system is called "Risk Amount" (Protection Money). The report of Dr. U.V. Singh has described the Risk Amount as follows:

"Transportation of iron ore on "Risk": (Protection)

> This is a unique illegal method of transportation adopted in BHS region wherein the transportation of "zero material" (illegally mined iron ore) has been guaranteed to reach safely to the destination. Some traders/companies /middlemen have taken this "job" of transportation of "zero material" to various destination by charging "commission" for rendering services taking "risk". In this phenomenon, the guarantor or "risker" takes the guarantee for safe delivery of the iron ore without any valid transit permits or with permits which he managed to obtain from some source or by using fake permits; everything is being done taking risk. Hence the term "transportation on risk" and the person who takes guarantee "the risker" is being frequently used in the sphere of illegal mining in BHS region. While transporting this illegal material if the vehicle with ore is caught on the way by any of the competent authority, the "guarantor" takes the responsibility to get it released by adopting legal or illegal means and also bear expenses incurred in this process. The world 'zero material', 'risk' and 'risker' are frequently used code words in the BHS region. It has been reliably learnt that such persons are having political as well as official nexus. The concerned department's officials are having full knowledge about this practice."

9) When I submitted my first report, even though such system was in existence in a small way, enough documentary evidence was not available. Hence, it has not been commented in that report. It is only during continuation of the investigation at this stage and while preparing this report, attempts were made to find out more about this system. In this connection a search and seizure was also carried out at Belekeri port on 20/2/2010. This search and seizure was a turning point in this investigation, which has led to another huge racket. Various records connected to smuggling of illegal iron ore, transport of iron ore using forged permits of Andhra Pradesh for loading materials at Hospet, Sandur, Gadag, Bagalkot, Chitradurga and other places were discovered. The Xerox copies of some forged permits are enclosed separately in the chapter on illegal exports of iron ore in this report. On analyzing these records it is found that large quantity of stolen iron ore was being transported

without valid permits and connected records etc required under M&M (R&D) and Rules, Karnataka Forest Act and Rules and other connected Acts & Rules applicable. Subsequent to this seizure, the Income Tax department, Bangalore had also made searches and seized documents, electronic data, computers etc from the premises of iron ore related traders, lessees and others. The information with the Income tax department is shared on exchange basis. In this connection electronic records seized from the premises of Karapudi Mahesh (K. Mahesh) has been obtained from the Income Tax department. The electronic data provided by Income Tax department were perused and analyzed. The trails of various Bank Accounts of many traders and lessees etc were verified. The records pertaining to collection of Risk Amount by Sri Karapudi Mahesh and Sri Govind (Govindanna) and their associates have been compiled together with respect to the persons who have paid the "risk amount". It is commonly known as "risk" or "zero material". Zero material means transportation of the iron ore without transit permits of Mines and Forest departments and illegally extracted iron ore. The amount paid for this type of transportation is shown in Table-2 of Chapter-28 of Dr. U.V. Singh's report on this matter.

10) This table shows the amount received by K.Mahesh and Associates. The total amount paid as per this list comes to 40,92,88,860.00. In the above trial, there are 382 traders/ firms/ companies/others engaged in illegal trade of iron ore transport and sale,illegal exports. According to Dr. U.V. Singh, this list is also not complete. It also notes that some of the names in the table of risk amount are of partners in some registered firms or companies. One of such name is Sri Mahendra Jain, who is a partner in M/s. Continent Impex Pvt. Ltd, Bangalore. There may be many such companies involved in illegal trade of iron ore. As stated above, of 40,92,88,860/-in the period of Six months (November 2009 to April 2010) have been collected by Sri Karapudi Mahesh andhis Associates.

x x x x x x

40) Considering the vital role of administration at district, taluk and below to control illegal mining, it is recommended that officials must be carefully chosen for posting in mining districts.

41) With the above facts and circumstances the following conclusions are drawn for needful action.

(1) On perusal of documents provided by Income Tax Department it is an eye opener as regard large scale corruption prevailing in the Government administration. The corruption prevailed in all the Departments connected directly to even remotely to mining.

(2) The information is available only of a group of persons involved in illegal mining activities. It cannot be ruled out similar such corrupt practices by others in various capacities.

(3) The information from the seized records, it is found that Sri Karapudi Mahesh and his associates were fully involved in illegal mining in Bellary District and also others districts of iron ore belt. To carry out such illegal mining activities huge amount of money has been paid as bribe to Government Officials and other connected persons.

(4) The bribe money was paid to the official of Districts of Bellary, Chitradurga, Tumkur, Bangalore, Kolar, Davanagere, Haveri, Koppal, Gadag, Raichur, Gulbarga, Bijapur, Bagalkot, Belgaum, Dharwad, North Canara and districts all along the roads from Bellary to Krishnapatnam to get undue favour.

(5) An approximate amount of Rs. 24662377.00 has been paid to 617 officials and others. The list of officials (names and designations) and others is provided in table (1). Since the money is accepted as bribe for showing undue favour (Public servant taking gratification other than legal remuneration in respect of an official act) action should be initiated under Prevention of Corruption Act 1988 against all those officials whose names and designations are figured in the Table-1 of Chapter-28 of Dr. U.V.Singh's Report. Further the amount received by them should be recovered and forfeited to State Government after following due process of Law.

(6) Action should also be initiated against Sri K. Mahesh and his associates who have paid money to the officials and others for carrying out illegal mining activities.

(7) An approximate amount of Rs. 40,92,88,860.00 has been received by Sri K. Mahesh and his associates as

"risk amount". The risk amount as explained in the text has been paid by 382 persons/ firms/ companies/ others table (2). The risk amount is paid for transportation of illegal iron ore to various places hence the entire amount is paid for illegal activities and should be recovered from him after following due process of Law. The amount should be forfeited to State Government. Other contemplated action against Sri K. Mahesh and his associates and also those who have paid the risk amount should be initiated.

(8) An approximate amount of Rs. 629236810.00 for illegal iron ore trading have been paid to Sri K. Mahesh andassociates which might have reached to certain powerful politicians in the district. This trading amount should be recovered by following the provisions of Law. (table-3).

(9) An amount of Rs. 1,11,13,394.00 had been paid to obtain fake permits from Andhra Pradesh and permits of other leases from the officials of Mines and Forest in the district and outside the district. In this regard Sri Sajjan, Wahid, Mahesh, Yariswamy and others have acted as agents to obtain such permits (Table-4 of Chapter-28). A further investigation is required in this matter.

(10) An amount of Rs.4,79,03,917.00has been paid to "Sri. G.J.Reddy Sir" as Bellary risk amount (Table-8 of Chapter-28). Of course this is not a final figure. It is noted that the amount has been paid through the bank accounts of Axis bank, Bellary A/c nos. 2669 and 16667. These accounts pertain to Sree Bhakta Markandeshwara Minerals (SBMM) and Sri Lakshmi VenkateshwaraMinerals respectively. The rest of the money has been paid through cash. The amount so paid as been routed through circuitous routes. Since the amount is paid for having given protection for illegal mining activities. It should be recovered by the following the provisions of Law and forfeited to State Government. Contemplated action should also be initiated against "Sri G.J. Reddy Sir"under the various provisions of Law.

(11) There were many firms/ companies/ individuals who were transporting the illegal iron ore to Belekeri Port as listed in Table-5 of Chapter-28. It is cross-verified and found that they were involved in paying the risk amount to Sri K. Mahesh and his associates. Some of

their names are also figured in the table of trading amount. Action should be initiated against them.

(12) From the seized records many accounts details were found. These accounts were verified with the concerned banks and Income Tax Department. There are about 60 bank accounts connected with the iron ore trading operated by Sri K. Mahesh and his associates. On verification of the transactionsin these accounts it is noted that there is close linkages between the illegal mining and transactions. Most of these accounts are opened in the 2008-09 and also 2009-10. The movement of money was varying during 2009-10 when the illegal mining activities were at peak. Further investigation is required in this matter.

(13) From the seized records it is noted that there were hundreds of peoples were engaged by Sri K. Mahesh and his associates. The names are given table (11). This list is not exhaustive. There may be many more names. These names would be helpful in further investigation.

(14) It is observed from the records that there was heavy moment of vehicles from one plot to other and leases to plots without having any permit. The list of such movement is given in table (12) and Annexures 1a, 1b, 1c and 1d of Chapter-28. This indicate the quantum of illegalities and un-control movements. Since heavy bribes were paid to all concerned there was hardly any check on the movement of vehicle which was carrying illegal iron ore. Further investigation in this part may reveal the facts.

(15) The seized record of Income Tax Department pertaining to Sri Madhukumar Varma (MKV) indicates payments made to various persons for various purposes. Since a partnership firm M/s MadhushreeEnterprises is managed by him involved in illegal mining in Bellary district a further investigation is required in this matter.

(16) It is observed from the seized records that hawala money is paid. Though the quantum of money is quite less, but it indicates the prevailing of hawala transactions in illegal mining. This requires further investigation.

42) The above recommendations made by Dr.U.V. Singh and team is accepted and recommended for implementation by the Government and other Competent Authorities. Further, in this Chapter, wherever the names of the officers are stated and in some instances, designation of the officers are stated, it is recommended to the State Government to initiate action against such officer/officials under the Prevention of Corruption Act, 1988 or under the relevant Disciplinary Rules.

43) Action should also be taken against all those who are involved in the illegal mining under the relevant provisions of Law, with recovery of losses to the State Government and penal actions should also be resorted to, wherever necessary.

44) The above recommendations are made under Sec. 12(3) of the Karnataka Lokayukta Act, 1984. The action taken or proposed to be taken on these recommendations be intimated to this authority, as required under Sec. 12(4) of the Karnataka Lokayukta Act, 1984.

Sd/-
(N.SANTOSH HEGDE)
LOKAYUKTA"

29. The High Level Committee of the State Government arrived at a conclusion that the officials against whom materials were available on record should be subjected to disciplinary action and the State Government vide order dated 6.9.2013 entrusted the disciplinary enquiry to be held against the officials named in the said Government Order to Karnataka Lokayuktha and Upa-Lokayuktha in exercise of the powers conferred under Rule 14-A and Rule 214 of the CCA Rules of 1957. The Lokayuktha Establishment nominated 2 Additional Registrar of Enquiries as

Enquiry Officers. The name of respondent No.1 finds a place at Sl.No.610 of the list of 617 officials to whom bribes were allegedly paid by one Karapudi Mahesh and his associates under Chapter 28 of the Karnataka Lokayuktha Report, dated 27.7.2011 regarding "collapse of administrative and governance system". The charge sheet was finally issued on 8.4.2015 and respondent No.1 immediately rushed to the Tribunal by filing an Application i.e., 2199/2016. The Tribunal has quashed the order dated 6.9.2013 by which the enquiry was entrusted to the Lokayuktha as well as the charge sheet dated 8.4.2015.

30. The relevant statutory provisions necessary for adjudicating the present writ petition under the Karnataka Lokayuktha Act, 1984 are reproduced as under;

> "30.1 **Section 7: Matters which may be investigated by the Lokayukta and an Upa-lokayukta.-**
>
> **(2-A)** Notwithstanding anything contained in sub-sections (1) and 2), the Lokayukta or an Upa-Lokayukta may investigate any action taken by or with the general or specific approval of a public servant, if it is referred to him by the State Government.
>
> 30.2 **Section 9: Provisions relating to complaints and investigations.-**
>
> 1. Subject to the provisions of this Act, any person may make a complaint under this Act to the Lokayukta or an Upalokayukta.

Provided that in case of a grievance, if the person aggrieved is dead or for any reason, unable to act for himself, the complaint may be made or if it is already made, may be prosecuted by his legal representatives or by any other person who is authorized by him in writing in this behalf.

2. Every complaint shall be made in the form of a statement supported by an affidavit and in such forms and in such manner as may be prescribed.

3. Where the Lokayukta or an Upalokayukta proposes, after making such preliminary inquiry as he deemed fit to conduct any investigation under this Act, he -

(a) shall forward a copy of the complaint and in the case of an investigation initiated suo-motu by him, the opinion recorded by him to initiate the investigation under sub-section (1) or (2), as the case may be, of section 7; to the public servant and the Competent Authority concerned;

(b) shall afford to such public servant an opportunity to offer his comments on such complaint or opinion recorded under sub-section (1) and (2) of section 7 as the case may be,

(c) may make such order as to the safe custody of documents relevant to the investigation, as he deems fit.

3(A) the preliminary enquiry contemplated by the Lokayukta or the Upalokayukta before ordering an investigation under sub-section (3), shall ordinarily be completed within a period of ninety days and for the reasons to be recorded in writing a further period of ninety days from the date of receipt of complaint.

3(B) In case the Lokayukta or the Upalokayukta, after making such preliminary inquiry, decides to conduct investigation as referred to in sub-section (3), he shall get the investigation conducted as expeditiously as possible and preferably within a period of six months from the date of the order may be him initiating investigation under sub-section (3).

Provided that, the Lokayukta of the Upalokayukta may extend the said period by a further period not exceeding

six months at a time for the reasons to be recorded in writing.

Provided further that, any delay in completion of preliminary enquiry or investigation as stated above shall not vitiate the proceedings or cause prejudice, cannot be taken as a defence.

4. Save as aforesaid, the procedure for conducting any such investigation shall be such, and may be held either in public or in camera, as the Lokayukta or the Upalokayukta, as the case may be, considers appropriate in the circumstances of the case.

5. The Lokayukta or the Upalokayukta may, in his discretion, refuse to investigate or cease to investigate any complaint involving a grievance or an allegation, if in his opinion,-

(a) the complaint is frivolous or vexatious or is not made in good faith;

(b) There are no sufficient grounds for investigating or, as the case may be, for continuing the investigation; or

(c) Other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail such remedies.

6. In any case where the Lokayukta or an Upalokayukta decides not to entertain a complaint or to discontinue any investigation in respect of a complaint he shall record his reasons therefor and communicate the same to the complainant and the public servant concerned.

7. The conduct of an investigation under this Act against a Public servant in respect of any action shall not affect such action, or any power or duty of any other public servant to take further action with respect to any matter subject to the investigation.

30.3 **Section 12: Reports of Lokayukta, etc.-** (1) If, after investigation of any action involving a grievance has been made, the Lokayukta or an Upalokayukta is satisfied

that such action has resulted in injustice or undue hardship to the complainant or to any other person, the Lokayukta or an Upalokayukta 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 or the Lokayukta the Upalokayukta the action taken on the report.

(3) If, after investigation of any action involving an allegation has been made, the Lokayukta or an Upalokayukta 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 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 Upalokayukta the action taken or proposed to be taken on the basis of the report.

(5) If the Lokayukta or the Upalokayukta 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 annually a consolidated report on the performance of his functions and that of the Upalokayukta 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 Upalokayukta may at his discretion make available, from time to time, the substances 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. "

31. The first issue which has to be decided by this Court is, whether in case of a reference under Section 7(2-A) of the Act of 1984, is it mandatory to follow the procedure prescribed under Section 9 of the Act of 1984.

32. Learned counsel for respondent No.1/employee has placed heavy reliance upon a judgment delivered in the case of **Sri B S Yeddyurappa (supra).** This Court has carefully gone through the aforesaid judgment. It was a case wherein a Former Chief Minister of the State of Karnataka has preferred a writ petition under Articles 226 and 227 of the Constitution of India for quashment of the complaint dated 22.8.2011 filed by the Superintendent of Police, Karnataka Lokayuktha, Bengaluru, against him for the offences under Sections 7, 8, 9 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988. A prayer for quahsment of the FIR as well as a prayer for quashment of the Sanction Order dated 2.8.2011 was also made before this Court. It was certainly not a case for quashment of a charge sheet

issued for initiating a departmental enquiry proceedings and the fact remains that the statutory provisions governing the field are very clear on the subject. In case an investigation is made under Section 7(2-A) of the Act of 1984, there is no requirement of following the procedure prescribed under Section 9 of the Act of 1984. Once the statutory provision does not provide for following the procedure prescribed under Section 9 of the Act of 1984, by no stretch of imagination, something which was not provided under Section 7(2-A) of the Act of 1984, could not have been made applicable in respect of the matters referred by the State Government to the Lokayuktha on reference made under Section 12(3) of the Act of 1984. In the aforesaid aspect of the matter, the decision delivered by this Court in the case of **B.S.Yeddyurappa (supra),** is distinguishable.

33. Learned counsel for respondent No.1 has also placed reliance upon a judgment delivered in the case of **H.N.Niranjan (supra)** and it has been argued that there has been no independent application of mind on the part of the State Government while forwarding the matter based upon the report of the Lokayuktha for holding an enquiry against the government servants. The facts of the case reveal that a report was submitted by the Lokayuktha establishment, the Government

constituted a High Level Committee and the Lokayuktha report was looked into independently by the State Government and thereafter, the matter was forwarded to the Lokayuktha for holding an enquiry under Section 12(4) of Act of 1984. Whether respondent No.1 has committed misconduct or not can be looked into in a departmental enquiry proceedings and the Tribunal has certainly transgressed the jurisdiction by quashing the charge sheet at the initial stage.

34. The Apex Court in the case of **Kunisetty Satyanarayana (supra)** has held as under;

> " 14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.
>
> 15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

> 16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter. ”

35. In the present case, a charge sheet has been issued by the competent disciplinary authority and it is not a vague charge sheet. Respondent No.1 will certainly have all rights to represent himself and defend himself before the enquiry officer and in a case of corruption of such a magnitude, quashing the charge sheet is nothing but a travesty of justice.

36. The Hon’ble Lokayuktha at the relevant point of time has submitted a detailed report after conducting a thorough probe and it is a fact finding report and therefore, while conducting a preliminary enquiry, the question of granting an opportunity of hearing as argued before this Court by respondent No.1 does not arise. It has been argued before this Court that the principles of natural justice and fair play have been violated as no opportunity of hearing was given while conducting a preliminary enquiry by the Lokayuktha Establishment.

37. The Apex Court in the case of **Narayan Dattatraya Ramteerthakhar v. State of Maharashtra And Others, reported in (1997) 1 SCC 299,** has dealt with the issue of

departmental enquiry and it has been held in the aforesaid case that the preliminary enquiry has nothing to do with the enquiry conducted after issue of the charge sheet, meaning thereby, the requirement of following the principles of natural justice and fair play while conducting a departmental enquiry does not arise, in case, subsequently a charge sheet is issued and a departmental enquiry is held and the charged official is given liberty in the regular departmental enquiry. Paragraph 3 of the aforesaid judgment reads as under;

> **"3.** Learned counsel for the petitioner sought to contend that the petitioner has not committed any misappropriation and that he was forced to deposit the money. We cannot accept the contention in view of the fact that the petitioner himself had deposited the amount. It is then contended that the preliminary enquiry was not properly conducted and, therefore, the enquiry is vitiated by principles of natural justice. We find no force in the contention. The preliminary enquiry has nothing to do with the enquiry conducted after the issue of the charge-sheet. The former action would be to find whether disciplinary enquiry should be initiated against the delinquent. After full-fledged enquiry was held, the preliminary enquiry had lost its importance."

38. The Hon'ble Supreme Court in the case of **Nirmala J.Jhala, reported in (2013) 4 SCC 301,** in paragraphs 14, 41, 48 and 52 has held as under;

> **14.** In *Noor Aga* v. *State of Punjab* [(2008) 16 SCC 417 : (2010) 3 SCC (Cri) 748 : AIR 2009 SC Supp 852] , it was held that : (SCC p. 460, para 88)
>
> > "*88.* … '*17.* The departmental proceeding being a quasi-judicial one the principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on

> the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles.' [**Ed.** : As observed in *Moni Shankar* v. *Union of India*, (2008) 3 SCC 484 at p. 492, para 17 : (2008) 1 SCC (L&S) 819.] "

(See also *Roop Singh Negi* v. *Punjab National Bank* [(2009) 2 SCC 570 : (2009) 1 SCC (L&S) 398 : AIR 2008 SC Supp 921] , *Union of India* v. *Naman Singh Shekhawat* [(2008) 4 SCC 1 : (2008) 1 SCC (L&S) 1053] and *Vijay Singh* v. *State of U.P.* [(2012) 5 SCC 242 : AIR 2012 SC 2840])

41. In the aforesaid backdrop, we have to consider the most relevant issue involved in this case. Admittedly, the enquiry officer, the High Court on administrative side as well on judicial side, had placed a very heavy reliance on the statement made by Shri C.B. Gajjar, Advocate, Mr G.G. Jani, complainant and that of Shri P.K. Pancholi, Advocate, in the preliminary inquiry before the Vigilance Officer. Therefore, the question does arise as to whether it was permissible for either of them to take into consideration their statements recorded in the preliminary inquiry, which had been held behind the back of the appellant, and for which she had no opportunity to cross-examine either of them.

48. "A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the case were [to be] believed. While determining whether a prima facie case had been made out or not the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence." (Vide *Martin Burn Ltd.* v. *R.N. Banerjee* [AIR 1958 SC 79] , AIR p. 85, para 27)

[See also *Bangalore Woollen Cotton and Silk Mills Co. Ltd.* v. *B. Dasappa* [AIR 1960 SC 1352] , *V.C. Shukla* v. *State (Delhi Admn.)* [1980 Supp SCC 249 : 1980 SCC (Cri) 849 : AIR 1980 SC 1382] , *Dalpat Kumar* v. *Prahlad Singh* [(1992) 1 SCC 719 : AIR 1993 SC 276] and *Cholan Roadways Ltd.* v. *G. Thirugnanasambandam* [(2005) 3 SCC 241 : 2005 SCC (L&S) 395 : AIR 2005 SC 570] .]

52. In view of the above, we reach the following inescapable conclusions:

52.1. The High Court failed to appreciate that the appellant had not granted long adjournments to the accused-complainant as the appellant wanted to conclude the trial at the earliest. The case of the accused-complainant which was taking its time, had suddenly gathered pace, thus, he would have naturally felt aggrieved by failing to notice it. The High Court erred in recording a finding that the complainant had no ill will or motive to make any allegation against the appellant.

52.2. The enquiry officer, the High Court on administrative side as well as on judicial side, committed a grave error in placing reliance on the statement of the complainant as well as of Shri C.B. Gajjar, Advocate, recorded in a preliminary enquiry. The preliminary enquiry and its report loses significance/importance, once the regular enquiry is initiated by issuing charge-sheet to the delinquent. Thus, it was all in violation of the principles of natural justice.

52.3. The High Court erred in shifting the onus of proving various negative circumstances as referred to hereinabove, upon the appellant who was the delinquent in the enquiry.

52.4. The onus lies on the department to prove the charge and it failed to examine any of the employees of the court i.e. stenographer, Bench Secretary or peon attached to the office of the appellant for proving the entry of Shri Gajjar, Advocate in her chamber on 17-8-1993.

52.5. The complainant has been disbelieved by the enquiry officer as well as the High Court on various issues, particularly on the point of his personal hearing, the conversation between the appellant and Shri C.B. Gajjar, Advocate on 17-8-1993, when they met in the chamber.

52.6. Similarly, the allegation of the complainant, that the appellant had threatened him through his wife, forcing him to withdraw the complaint against her, has been disbelieved.

52.7. The complainant as well as Shri C.B. Gajjar, Advocate had been talking about the appellant's husband having collecting the amount on behalf of the appellant, for deciding the cases, though at that point of time, she was unmarried.

52.8. There is nothing on record to show that the appellant whose defence has been disbelieved in toto, had ever been given any adverse entry in her ACRs, or punished earlier in

> any enquiry. While she has been punished solely on uncorroborated statement of an accused facing trial for misappropriation."

39. In the aforesaid case, the Hon'ble Supreme Court has held that the preliminary enquiry and its report loses its significance/importance once a regular enquiry is initiated by issuing a charge sheet to the delinquent and it is not at all mandatory to serve a copy of the preliminary enquiry report to the delinquent. Therefore, in the present case also a preliminary enquiry took place to find out whether a prima facie case exists or not and thereafter, the charge sheet has been issued and it is not a case where on the basis of only a preliminary enquiry report the punishment order is going to be inflicted. The delinquent will certainly be granted an opportunity of hearing in the regular departmental enquiry.

40. The contention of the learned counsel for the delinquent that there is violation of the principles of natural justice and fair play is also unfounded. The Principles of natural justice and fair play cannot be put into a straight jacket formula and merely because in the preliminary enquiry, opportunity of hearing was not given, it does not mean that the charge sheet is a vague charge sheet.

41. The Apex Court in the case of **Nisha Priya Bhatia v. Union of India and Another, reported in (2020) 13 SCC 56,** in paragraph 62 has held as under;

> **"**62**.** A priori, a mechanical extension of the principles of natural justice would be against the proprieties of justice. This has been restated in the post *Maneka Gandhi* v. *Union of India* [*Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248] era in a series of judgments. This Court in *ECIL* v. *B. Karunakar* [*ECIL* v. *B. Karunakar*, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] , summarised the post *Maneka* [*Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248] position thus: (SCC pp. 751-52, paras 20-22)
>
> > "*20*. The origins of the law can also be traced to the principles of natural justice, as developed in the following cases: In *A.K. Kraipak* v. *Union of India* [*A.K. Kraipak* v. *Union of India*, (1969) 2 SCC 262] , it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial ones. An unjust decision in an administrative inquiry may have a more far-reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice has been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.

> *21*. In *Board of Mining Examination & Chief Inspector of Mines* v. *Ramjee* [*Board of Mining Examination & Chief Inspector of Mines* v. *Ramjee*, (1977) 2 SCC 256 : 1977 SCC (L&S) 226] , the Court has observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. *Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The courts cannot look at law in the abstract or natural justice as a mere artefact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures*.
>
> *22*. In *ICAI* v. *L.K. Ratna* [*ICAI* v. *L.K. Ratna*, (1986) 4 SCC 537] , *Charan Lal Sahu* v. *Union of India* [*Charan Lal Sahu* v. *Union of India*, (1990) 1 SCC 613] (*Bhopal Gas Leak Disaster case*) and *C.B. Gautam* v. *Union of India* [*C.B. Gautam* v. *Union of India*, (1993) 1 SCC 78] , the doctrine that the principles of natural justice must be applied in the unoccupied interstices of the statute unless there is a clear mandate to the contrary, is reiterated."
>
> (emphasis supplied)

42. In the light of the aforesaid, it can be safely gathered that a mechanical extension of the principles of natural justice would be against the proprieties of justice and therefore, as opportunity of hearing will certainly be provided in the departmental enquiry, no case for interference is made out in respect of the charge sheet issued by the disciplinary authority.

43. In the light of the aforesaid judgment, the question of granting an opportunity of hearing as argued by the learned counsel for respondent No.1 while conducting a preliminary enquiry does not arise. Respondent No.1 would certainly be entitled for grant of opportunity during the departmental enquiry to be conducted by the Lokayuktha establishment. It is a well settled proposition of law that in the matter of preliminary enquiry or fact finding enquiry relating to departmental enquiries, even if an opportunity of hearing is not granted to the delinquent, it will not vitiate the departmental enquiry conducted by the disciplinary authority. The departmental enquiry itself is a complete trial wherein the employee gets full opportunity to defend himself and therefore, merely because the procedure of Section 9 of the Act of 1984 has not been followed, the question of quashing the charge sheet only because of opportunity of hearing was not given during the preliminary enquiry does not arise. The Tribunal has erred in law and in fact in quashing the charge sheet.

44. Another important aspect of the case is that the Tribunal while quashing the charge sheet and setting aside the entrustment order has held that no opportunity of hearing was granted by the Lokayuktha before submitting a preliminary enquiry report/fact finding enquiry report. The Tribunal has

certainly erred in law and in facts in appreciating the fact that the report under Section 12(3) of the Act of 1984 was arising out of the proceedings under Section 7(2-A) of the Act and the requirement of Sections 8 and 9 of the Act of 1984 including the issuance of a notice is not in existence nor is applicable to the proceedings under Section 7(2-A) of the Act of 1984. A similar view has been taken by this Court in the case of **Dr.K.Chowdappa v. State of Karnataka**, reported in ILR 1990 Kar. 798. In the aforesaid case, this Court in paragraphs 7 and 9 has held as under;

> **"7.** The records of the case are produced. On going through the records of the case, it is noticed that this is a case in which a complaint was filed before the Chief Minister of the State. The office of the Chief Minister, after examining said complaint, and on the approval of the Chief Minister, had referred the complaint to the Upalokayukta for investigation. Therefore, this is a case which falls under sub-section (2A) of Section 7 and not Section 9 of the Act. Sub-section (2A) of Section 7 of the Act over-rides sub-section (1) and (2) of Section 7 of the Act. Section 9 of the Act is attracted when a complaint is made directly by any person before the Lokayukta or Upalokayukta, as the case may be, and not to a case where the State Government refers a matter for investigating into any action taken by or with the general or specific approval of a public servant. Thus when a case is referred to Lokayukta or Upalokayukta is not required to follow the procedure laid down in sub-section (3) of Section 9 of the Act.
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> **9.** However, learned Counsel for the petitioners has placed on a decision of the Supreme Court in *The State of Orissa* v. *Dhirendranath Das* [AIR 1961 SC 1715.] . In that case, it was held thus:
>
> > "If the two sets of Rules were in operation at the material time when the enquiry was directed against the respondent and by order of the Governor, the Enquiry was directed under the Tribunal Rules which are "more drastic" and prejudicial to the interests of the respondent, a clear

> case of discrimination arises and the order directing enquiry against the respondent and the subsequent proceedings are liable to be struck down as infringing Article 14 of the Constitution."
>
> In the instant case, there are no two sets of Rules. The Act governs the proceedings before the Lokayukta or the Upalokayukta and it also prescribes the limits of jurisdiction. Section 7(2A) of the Act, the Constitutional validity of which is not challenged, starts with a non-obstante clause and enables the State Government to refer a case for investigation to the Lokayukta or an Upalokayukta in respect of any action taken by or with the general or specific approval of a public servant. It is already pointed out that the State Government being a high authority and a Competent Authority under the Act is expected to satisfy itself as to whether the complaint is false and vexatious. In fact, the grounds on which the Lokayukta or an Upalokayukta can refuse to investigate or cease to Investigate any complaint as enumerated in sub-section (5) of Section 9 of the Act, will have to be applied and the State Government has to satisfy itself that the case does not fall under sub-section (5) of Section 9 of the Act before referring it to the Lokayukta or an Upalokayukta as the case may be. It cannot act as a Post Box. Therefore, it is not possible to hold that the ratio of the aforesaid decision of the Supreme Court* applies to the case on hand. Accordingly, Point No. 1 is answered in the negative."

45. In the light of the aforesaid judgment, in the matter of enquiry conducted by the Lokayuktha and the proceedings under Section 7(2-A) of the Act of 1984, the question of issuance of a show cause notice nor the question of grant of opportunity of hearing arises and therefore, the impugned order passed by the Tribunal deserves to be quashed by this Court.

46. A similar view has been taken by this Court in the case of **Gopalachari v. State of Karnataka (supra).** This Court in the aforesaid case in paragraphs 8 to 14 has held as under;

"8. Upon hearing the learned counsel for the parties and on careful perusal of the pleadings and the entire material on record, it can be seen that Section 8 of the Act pertains to 'matters that are not subject to investigation by the Lokayukta except as provided'. It is useful to extract the provisions contained under Section 8 of the Act, as considerable arguments are advanced on the basis of these provisions. Section 8 reads as follows:

> "8. Matters not subject to investigation.- (1) Except as hereinafter provided, the Lokayukta or an Upa-lokayukta shall not conduct any investigation under this Act in the case of a complaint involving a grievance in respect of any action.-
>
> (a) if such action relates to any matter specified in the Second Schedule; or
>
> (b) if the complainant has or had, any remedy by way of appeal, revision, review or other proceedings before any Tribunal, [Court Officer or other authority and has not availed of the same.]

(2) The Lokayukta or an Upa-lokayukta shall not investigate.-

> (a) any action in respect of which a formal and public inquiry has been ordered with the prior concurrence of the Lokayukta or an Upa-lokayukta, as the case may be;
>
> (b) any action in respect of a matter which has been referred for inquiry, under the Commission of Inquiry Act, 1952 with the prior concurrence of the Lokayukta or an Upa-lokayukta, as the case may be;
>
> (c) any complaint involving a grievance made after the expiry of a period of six months from the date on which the action complained against becomes known to the complainant; or
>
> (d) any complaint involving an allegation made after the expiry of five years from the date on which the action complained against is alleged to have taken place:

Provided that he may entertain a complaint referred to in clauses (c) and (d) if the complainant satisfies that he had sufficient cause for not making the complaint within the period specified in those clauses."

9. It is necessary to point out that Section 8 relates to a case of complaint given to the Lokayukta or the Upa-lokayukta and the investigation to be conducted based on the same. Section 8 (2) enacts a bar for the Lokayukta or Upa-lokayukta to investigate the matter under certain circumstances. As the learned counsel for the petitioners has restricted his contentions only with reference to Sub-Clause (2)(c) & (d) of Section 8 of the Act, the examination of the legality or otherwise of the action in these writ petitions is required to be done with reference to these two clauses.

10. Sub-clause (2)(c) of Section 8 enacts a bar for investigation of any complaint involving a grievance made after the expiry of six months from the date on which the action complained becomes known to the complainant. In the instant case, there is no complaint based on which the Lokayukta has assumed powers to investigate the matter. Section 8 contemplates that where a complaint has been filed before the Lokayukta or Upa-lokayukta, in such a situation the requirement of law is that the Lokayukta or Upa-lokayukta will not investigate any complaint involving a grievance made after the expiry of six months from the date the action complained had become known to the complaint as per Sub-Clause (2)(c) of Section 8. Similarly, Sub-clause 2(d) of Section 8 enacts a bar for investigation by the Lokayukta or Upa-lokayukta of any complaint involving allegations made after the expiry of five years from the date on which the action complained had allegedly have taken place. Indeed, the proviso to Section 8(2) further makes it clear that if the complainant were to satisfy the Lokayukta or Upa-lokayukta that he had sufficient cause for not making the complaint within the period specified in those clauses, then the Lokayukta or Upa-lokayukta could still entertain the complaint though it was filed after the expiry of six months from the date the allegation came to the knowledge of the complaint or after the expiry of five years from the date the incident took place.

11. By the impugned Government order, the State Government has referred the matter for investigation to the Lokayukta after being satisfied of the illegality committed in the transaction which was forthcoming from the report submitted by the C.O.D. The provision contained under Section 8 of the Act cannot be made applicable to a case where the State Government itself entrusts the matter to the Lokayukta for investigation. Provisions of Section 8 are applicable only where based on a complaint made by an aggrieved person investigation is sought to be initiated by the Lokayukta or Upa-lokayukta. In fact, this becomes amply clear by a perusal of Section 9 of the Act which deals with the provisions relating to complaints and investigation to be made by Lokayukta or Upa-lokayukta.

12. Provisions contained under Section 9(2) states that every complaint shall be made in the form of a statement supported by an affidavit and in such form and in such manner as may be prescribed. If the Lokayukta or Upa-lokayukta proposes after making such preliminary enquiry as he deems fit to conduct any investigation, then the procedure that is required to be followed by him is enumerated in Sub-clause (3) of Section 9. Sub-clause (5) of Section 9 cloths the Lokayukta or Upa-lokayukta with discretion to refuse to investigate or cease to investigate any complaint, if in his opinion the complaint itself was frivolous or vexatious or is not made in good faith or there were no sufficient grounds for investigation or that other remedies were available to the complainant which the complainant ought to have availed appropriately.

13. It is thus clear that the scope of Sections 8 & 9 of the Act is totally different and reference of the matter for investigation by the State Government invoking the provisions of Section 7(2-A) of the Act is entirely different. Therefore, the contentions urged by the learned counsel for the petitioners trying to read into the provisions contained under Section 7(2-A) the provisions of Section 8(2)(c) & (d) of the Act regarding bar of limitation are misconceived and untenable.

14. Therefore, these writ petitions are devoid of merits. There is no illegality in the impugned Government Order. Hence, these writ petitions are dismissed."

47. The aforesaid judgment makes it very clear that time and again this Court has held that in case of proceedings under Section 7(2-A) of the Act of 1984, when a matter is referred by the State Government under Section 12(3) of the Act of 1984, the question of grant of opportunity of hearing does not arise.

48. The judgment delivered in the case of **Gopalachari v. State of Karnataka (supra)** was subjected to appeal and the Division Bench has dismissed the writ appeal, meaning thereby the order passed by the learned Single Judge has been affirmed [WA.No.1288-92/2012, decided on 24.4.2013 (DB)]. Thus, the question of grant of opportunity of hearing, keeping in view Section 7(2-A) and Section 12(3) of the Act of 1984 does not arise. The Tribunal has certainly erred in law and in facts in allowing the Application.

49. The learned counsel for respondent No.1/employee has vehemently argued before this Court that the Division Bench of this Court in the Case of **the Registrar, Karnataka Lokayuktha v. Dr.Dakshayini K and others**, W.P.No.58804/2016, decided on 7.6.2021 has held that the Lokauktha/Upa-lokayuktha does have the power to conduct an enquiry and the power to impose penalty is retained by the

Government under Rule 14(A)(2)(e) of the CCA Rules of 1957 and the Lokayuktha is not the person aggrieved entitling the Lokayuktha to file a petition before this Court.

50. This Court has carefully gone through the judgment delivered by the Division Bench in **Dr.Dakshayini's case (supra).** The present case has a distinguishable feature. In the present case, the matter was referred by the State Government to the Lokayuktha Establishment under Section 12(3) of the Act of 1984 and an enquiry was conducted under Section 7(2-A) of the Act of 1984. The enquiry report was forwarded to the State Government and thereafter, the State Government has entrusted the matter to the Lokayuktha for conducting the departmental enquiry, whereas in the case of **Dr.Dakshayini's case** a report was directly made to the Lokayuktha and the matter was investigated by the Lokayuktha and thereafter, the report was forwarded to the State Government and the State Government has entrusted the matter to the Upa-lokayuktha for conducting a departmental enquiry. In **Dr.Dakshayini's case** the State Government, in spite of there being an adverse order passed against the State Government by the Tribunal, opted not to challenge the same before the High Court and in those circumstances, a writ petition was preferred by the Lokayuktha

and the Division Bench has held that the Lokayuktha is not the person aggrieved, hence, a petition at the behest of Lokayuktha is not maintainable.

51. In the present case, there is an error apparent on the face of the record committed by the Tribunal and this Court by invoking the inherent powers can certainly correct the error apparent on the face of the record. It is a well settled proposition of law that the High Court being a Court of Record has not only inherent powers, but also a duty to correct any error apparent on the face of the record. (See: **M.M.Thomas v. State of Kerala, reported in (2000) 1 SCC 666 and CCC Customs v. Hongo India P.Ltd., reported in (2009) 5 SCC 791).** It is trite law that label of an application is inconsequential and this Court can always correct an error apparent on the face of the record. Therefore, in the light of the aforesaid, this Court can certainly correct an error being a Court of Record by invoking its inherent powers.

52. The facts of the case reveal that though the State Government has entrusted the matter to the Lokayuktha to conduct an enquiry, the State Government is disinterested in challenging the order of the Tribunal. There are allegations of

corruption against large number of officers and other persons. The reason in not challenging the order passed by the Tribunal appears to be the pressure of the officers involved in the case. Therefore, the Lokayuktha, being a statutory body constituted to curb the menace, has an institutional interest and as well as the locus.

53. Learned counsel for respondent No.1/employee has also placed reliance upon a judgment delivered in the case of **Union of India and another v. Hemraj Singh Chauhan and others, (supra)** and **Chairman of Life Insurance Corporation of India and others vs. A Masilamani**, **(supra)** and his contention is that initiation of enquiry in the absence of any document/material evidence to support the charge would amount to subjecting respondent No.1 to unnecessary departmental enquiry and as the initiation of departmental enquiry adversely affects the service conditions, the charge sheet has rightly been quashed by the Tribunal and the does not warrant interference by this Court.

54. This Court has carefully gone through the aforesaid judgments and the present case is not a case of a vague charge sheet at all. Along with the charge sheet, voluminous documents

have been enclosed and the charge has to be proved based upon the documentary as well as other evidence produced before the enquiry officer. By no stretch of imagination, it can be said that initiation of enquiry is being done in the absence of any document/material evidence and therefore, the judgments relied upon by the learned counsel does not help respondent No.1.

55. The Division Bench of this Court in **J.P.Prakash v. State of Karnataka and another, W.P.No.5361/2016, decided on 6.4.2016,** while dealing with almost a similar matter, in paragraphs 2 to 6 has held as under;

> "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.
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> 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'bie 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 beheld 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.
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> 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."

56. In **J.P.Prakash's case (supra),** it has been held that the report of the Upa-lokayuktha cannot be said to be without jurisdiction and the report made therein by itself does not affect any legal right on the petitioner therein. The action of the State Government in entrusting the matter to the Upa-lokayuktha as

provided under Rule 14-A(2)(a) was upheld and it was also held that it is inappropriate to interfere in such matters at the stage of issuance of the charge sheet.

57. The present case reflects a very sorry state of affairs. A matter which was referred by the State Government for investigation under Section 7(2-A) of the Act of 1984 in the year 2007 has not attained finality on account of various litigations. The then Lokayuktha has submitted a very detailed and exhaustive report which has been reproduced by this Court and based upon the report, charge sheet has also been issued on 8.4.2015. We are in 2021. Again, on account of an application filed by respondent No.1 before the Tribunal, the matter has been delayed as the charge sheet itself was quashed by the Tribunal and the fact remains that the State Government has not been able to take any action against as many as 617 officials who were allegedly involved in corruption causing loss to the State Government running into crores and crores of rupees. Therefore, while allowing this writ petition, a request is being made to the Lokayuktha Establishment to conclude the departmental enquiry, as expeditiously as possible, preferably within a period of one year from today and the Lokayuktha Establishment shall not grant any adjournment in the matter of departmental enquiry. The

Lokayuktha is again requested to fix the dates fortnightly in order to conclude the enquiry at an early date. It is further made clear that no adjournment shall be granted and in case need so arises for grant of an adjournment, the enquiry officer shali record reasons for grant of such adjournment and the time granted by this Court shall stand extended proportionately in the light of the adjournments granted by the enquiry officer.

58. Resultantly, the writ petition is allowed. The order dated 19.4.2017 passed in Application No.2199/2016 by the Karnataka State Administrative Tribunal is set aside.

59. In the light of the order passed in WP.No.29212/2017, the connected writ petitions also stand allowed. The order dated 19.4.2017 passed in Application No.2198/2016 and the order dated 29.5.2018 passed in Application No.108/2017 by the Karnataka Administrative Tribunal are set aside.

Pending IAs, if any, stand disposed of.

No orders as to costs.

Sd/-
JUDGE

Sd/-
JUDGE

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