

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JANUARY 2017

PRESENT

THE HON'BLE MR. JUSTICE H.G.RAMESH

AND

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

WRIT PETITION NO.1831/2017 (GM-KLA)

R

BETWEEN:

SRI C.KRISHNAMURTHY
S/O LATE M.V.CHANNRAYAPPA
AGED ABOUT 53 YEARS
ASSISTANT EXECUTIVE ENGINEER
KARNATAKA HOUSING BOARD
CHITRADURGA - 577 502
RESIDING AT: NO.HIG-243/A
NEHA NILAYA, K.H.B. COLONY
NEAR K.H.B OFFICE
KELAGATE, CHITRADURGA - 577 502

... PETITIONER

(BY SRI H.C.SHIVARAMU, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS PRINCIPAL
SECRETARY, DEPARTMENT OF HOUSING
VIKASA SOUDHA
DR. B.R.AMBEDKAR VEEDHI
BANGALORE - 560 001
2. THE COMMISSIONER
KARNATAKA HOUSING BOARD
CAUVERY BHAVAN
BANGALORE - 560 001

3. THE UPA-LOKAYUKTHA
OFFICE OF THE KARNATAKA LOKAYUKTHA
M.S.BUILDING
DR. B.R.AMBEDKAR VEEDHI
BANGALORE – 560 001
4. THE ADDITIONAL REGISTRAR
OF ENQUIRIES-10
OFFICE OF THE KARNATAKA LOKAYUKTHA
M.S.BUILDING, DR. B.R.AMBEDKAR VEEDHI
BANGALORE – 560 001

... RESPONDENTS

(GOVERNMENT ADVOCATE SERVED)

WP FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ENQUIRY REPORT DATED 26.10.2016 (ANNEXURE-P) SUBMITTED BY RESPONDENT NO.4 AND THE RECOMMENDATION OF RESPONDENT NO.3 DATED 04.11.2016 (ANNEXURE-Q).

WP COMING ON FOR PRELIMINARY HEARING, THIS DAY, **H.G.RAMESH J.**, MADE THE FOLLOWING:

ORDER

H.G.RAMESH, J. (Crai):

1. In this writ petition, petitioner has sought for quashing of the enquiry report dated 26.10.2016 (Annexure-P) submitted by Additional Registrar of Enquiries-10, Karnataka Lokayukta, Bangalore, and also to quash the recommendation dated 04.11.2016 (Annexure-Q) of Upalokayukta, State of Karnataka.

2. The petitioner was subjected to a Disciplinary Inquiry on the following charge:

"That Sri. Krishnamurthy, the DGO while working as the Assistant Executive Engineer, KHB, Davangere, the KHB notified to acquire 360 acres of land in Kundawada village by fixing the value at Rs. 5 lakhs per acre but, without paying the fixed compensation directly to the owners of the land, DGO managed to get the land owners entitled for compensation to Bangalore and caused to pay compensation at Rs. 4,10,000/- per acre to the owners instead of Rs. 5,00,000/- by taking their signatures to cheques of Corporation bank of Anand Rao Circle Branch in Bangalore and thus caused loss to several owners of acquired land failing to maintain absolute integrity besides devotion to duty and acted in a manner unbecoming of Government servant and thus committed misconduct as enumerated U/R 3(1)(i) to (iii) of Karnataka Civil Service (Conduct) Rules 1966."

The Inquiry Officer has held that the charge is proved as per the enquiry report dated 26.10.2016 (Annexure-P). Upalokayukta, after considering the enquiry report, has recommended as per Annexure-Q dated 04.11.2016 as follows:

".....

9. Hence, considering the findings of the Inquiry Officer and also, having regard to the nature and the gravity of the misconduct alleged against the DGO, it is hereby recommended that the DGO - *Shri Krishnamurthy, Asst. Executive Engineer, Karnataka Housing Board, District Project Office, Davangere*, be punished with the penalty of 'dismissal from service' in exercise of powers under Rule 8(viii) of the Karnataka Civil Service (Classification, Control and Appeal) Rules, 1957.

10. Further, if the DGO is not prosecuted, he may be prosecuted for cheating the farmers and also, steps be taken for recovery of the amount.

11. Action taken in the matter is to be intimated to this Authority.

Connected records are enclosed herewith."

3. We have heard Sri H.C.Shivaramu, learned Counsel appearing for the petitioner and perused the record. He submitted that the recommendation of Upalokayukta is almost like a final order, and therefore, is unsustainable in law.

4. The recommendation is made by Upalokayukta as per Rule 14-A(2)(d) of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957; the Rule reads as follows:

"14-A(2)(d) After the inquiry is completed, the record of the case along with the findings of the Inquiring Officer and the recommendation of the Lokayukta or the Upalokayukta as the case may be, shall be sent to the Government."

By considering a regulation which is similar to the rule extracted above, this Court in Writ Petition No.23485/2015 (D.D. 24.11.2016) has held that Upalokayukta is required to send his recommendation along with the record of the case and the findings of the Inquiry Officer to the Disciplinary Authority. In the said decision, it is held that the decision of a Division Bench of this Court in

The KPTCL vs. Javarai Gowda & Anr. [ILR 2015 KAR 1615] is *per incuriam*. Further, it is stated in the said decision that the Disciplinary Authority is at liberty to disagree with the findings recorded by the Inquiry Officer and/or the recommendation of Upalokayukta by giving reasons to record its own findings. The recommendation given under the above extracted Rule is not declared as final under any provision of law. Therefore, the apprehension of the petitioner that the recommendation of Upalokayukta is the final order in the matter is not correct. It is for the Disciplinary Authority to consider the matter and to make a final order. With this observation, the writ petition is disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

KSR