

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF NOVEMBER 2022

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE S. VISHWAJITH SHETTY

W.P. No.50413 OF 2019 (GM-KLA)

BETWEEN:

1. S G PADMANABHA
S/O S L GOPALAKRISHNA GOWDA
AGED ABOUT 58 YEARS
WORKING AS EXECUTIVE ENGINEER
NO.2, DIVISION KARNATAKA SLUM
DEVELOPMENT BOARD, RESILDAR
STREET SESHADRIPURAM
BANGALORE-560 020
AND RESIDING AT NO.617
6TH CROSS, 4TH MAIN, 9TH BLOCK
II STAGE NAGARAGHAVI
BENGALURU-560 072.
2. B S SHAMBULINGAPPA
S/O B S SOMASHEKARAPPA
AGED ABOUT 55 YEARS
WORKING AS ASSISTANT EXECUTIVE
ENGINEER, KARNATAKA SLUM
DEVELOPMENT BOARD, BELAGAVI
SUB-DIVISION, BELAGAVI
AND PERMANENTLY RESIDING AT
CHIGURU, NO.499, GROUND FLOOR
6TH CROSS, KPC LAYOUT
NEAR SJR VERITY, BANGALORE-560 035.

... PETITIONERS

(BY MR. P.S. RAJAGOPAL, SR. COUNSEL FOR
MR. PUTTE GOWDA K, ADV.,)

AND:

1. STATE OF KARNATAKA
BY ITS PRINCIPAL SECRETARY TO GOVT
DEPARTMENT OF HOUSING
II FLOOR, VIKAS SOUDHA
DR. AMBEDKAR VEEDHI
BENGALURU-560 001.
2. KARNATAKA SLUM DEVELOPMENT BOARD
REPRESENTED BY ITS COMMISSIONER
RESILDAR STREET, SEHSADRIPURAM
BENGALURU-560 020.
3. KARNATAKA LOKAYUKTA
REPRESENTED BY ITS REGISTRAR
M S BUILDING, DR AMBEDKAR
VEEDHI, BENGALURU-560 001.

... RESPONDENTS

(BY MR. LAXMI NARAYANA, AGA FOR R1
MR. VENKATESH S. ARABATTI, ADV., FOR R3
MR. PRASHANTH B.R. ADV., FOR
MR. RAMACHANDRAN, ADV., FOR R2)

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE ENTIRE RECORDS LEADING TO THE ORDER OF ENTRUSTMENT OF ENQUIRY DATED 26.04.2016 OF GOVERNMENT, INQUIRY REPORT DATED 31.08.2019 AND RECOMMENDATION DATED 09.09.2019 AND. QUASH (i) ORDER OF GOVERNMENT DATED 26.04.2016 (UNDER ANNEX-G TO THE W.P.) ISSUED BY THE R-1, (ii) INQUIRY REPORT DATED 31.08.2019 (UNDER ANNEX-P TO THE W.P.) OF THE INQUIRY OFFICER AND (iii) RECOMMENDATION DATED 09.09.2019 (UNDER ANNEX-Q TO THE W.P.) OF THE R-

3/UPALOKAYUKTA-1 BY ISSUE OF A WRIT IN THE NATURE OF CERTIORARI AND GRANT ALL CONSEQUENTIAL BENEFITS.

THIS W.P. HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 16.11.2022, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, **ALOK ARADHE J.**, MADE THE FOLLOWING:

ORDER

The petitioners who are Assistant Engineer and Assistant Executive Engineer of Karnataka Slum Development Board (hereinafter referred to as the Board for short) assailed the validity of the Government order dated 26.04.2016 issued by Government of Karnataka and the enquiry report dated 31.08.2019 as well as recommendation dated 09.09.2019 submitted by Upalokayukta-1 and to grant the petitioners all consequential benefits. In order to appreciate grievance of the petitioners, relevant facts need mention, which are stated infra.

2. The petitioner No.1 joined the services of the Board on 01.03.1989 as Assistant Engineer and was promoted as Assistant Executive engineer with effect from

10.11.1999. The petitioner No.1 was further promoted as Executive Engineer with effect from 21.02.2011. At the relevant time, petitioner No.1 was posted at Dharwad. Petitioner No.2 joined the services of the erstwhile Board on 08.12.1987 as a Junior Engineer and was promoted as Executive Engineer with effect from 22.09.2000. The petitioner No.2 was further promoted as Assistant Executive Engineer and was posted at Dharwad.

3. Two complaints were made before Karnataka Lokayukta by Smt.Pramila Kotari and Sri.Ranganaika Tapela that petitioner No.2 in collusion with land mafia has committed certain irregularities in relation to integrated slum development project. The petitioner No.2 thereupon submitted a detailed reply to the Superintendent of Police, in which details of implementation of the project as well as distribution of houses was furnished. The Superintendent of Police directed investigation and after a thorough investigation submitted a report that no irregularities were committed

by petitioner No.2 and one K.A.Bashir Ahmed another Executive Engineer had drawn up the list of beneficiaries. The Lokayukta was not satisfied with the reply submitted by Superintendent of Police and issued notices on 22.01.2015 to petitioner No.1 and one Sri.H.K.Sudhir. The Lokayukta submitted a report under Section 12(3) of the Act dated 11.03.2016. The State Government thereafter by an order dated 26.04.2016 entrusted the enquiry to Lokayukta.

4. On the basis of the aforesaid entrustment, respondent No.3 by an order dated 08.06.2016 nominated Additional Registrar of Employees to frame charges and to conduct an enquiry. Thereupon a charge sheet was issued to the petitioners on 27.07.2016. The petitioner submitted a reply to the charge sheet. The enquiry officer submitted a report dated 31.08.2019. The Upalokayukta by a recommendation dated 09.09.2019 directed the recommendation of imposition of penalty of compulsory retirement. The State Government thereafter

realized that it is not the disciplinary authority in respect of the petitioners and therefore, by a communication dated 18.10.2019 made a recommendation to the Board.

5. The petitioners thereupon filed a writ petition seeking quashment of order dated 26.04.2016 issued by State Government, copy of enquiry report dated 13.08.2019 and recommendation dated 09.09.2019 made by UpaLokayukta. In the aforesaid factual background, this petition arises for our consideration.

6. Learned Senior counsel for the petitioners submitted that the petitioners are employees of Karnataka Housing Board, which has adopted the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 (hereinafter referred to as 'the Rules' for short) and therefore, the Board is the competent authority to initiate the disciplinary proceeding against the petitioners. The order of entrustment of enquiry to Upalokayukta and all consequential action is bad in law. It is also contended that the controversy in this petition

is squarely covered by a judgment of the division bench judgments of this court in W.P.No.31727/2018 (**'Shri.KAPINI GOWDA AND OTHERS VS. STATE OF KARNATAKA AND OTHERS**) and in **R.F. HUDEDAVAR VS. STATE OF KARNATAKA AND OTHERS'**, (2021) 6 **KLJ 224 (DB)** and an order dated 15.12.2021 passed by learned Single Judge in writ petition No.10558/2018.

7. On the other hand, learned counsel for the respondent No.3 submitted that the decision rendered by a division bench of this court in **R.F. HUDEDAVAR** supra does not apply to the facts of the case and decision rendered by another division Bench of this court in case of **'R.V.JATTANNA AND ANOTHER VS. STATE OF KARNATAKA AND OTHERS'** and connected matter passed in W.P.No.105350/2019 dated 30.01.2020. It is also submitted that Board has adopted the CCA Rules and Under Rule 14A of the Rules, the Government has rightly entrusted the enquiry to Lokayukta and there is

no bar for the State Government to entrust the enquiry to Lokayukta in case of a public servant.

8. We have considered the submissions made on both sides and have perused the record. The solitary issue, which arises for consideration in this writ appeal is, whether the State Government is competent to entrust the enquiry under Rule 14-A of the CCA Rules to Lokayukta in respect of employees of the Board. The petitioners are the employees of the Board whose service conditions are governed by Karnataka Slum Clearance Board Services (Cadre and Recruitment and Condition of Service) Rules, 1999 (hereinafter referred to as the 1999 Rules for short). Rule 3(2) of the 1999 Rules define the appointing authority, which means the authority specified in column 3 of Schedule III. From perusal of Schedule III of the Rules, it is evident that the appointing authority in respect of Assistant Engineer and Assistant Executive Engineer, is the Board. Under Rule 5 of the aforesaid Rules, the provisions of Karnataka Civil

Services (Classification, Control and Appeal) Rules, 1957 have been made applicable.

9. Rule 5 of the 1999 Rules reads as under:

5. Application of certain rules: The provisions of

(i) *The Karnataka Civil Service Rules;*

(ii) *The Karnataka Civil Service (Conduct) Rules, 1966*

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

(iv) *The Karnataka Civil Services (General Recruitment) Rules, 1977*

(v) *The Karnataka Civil Services (Probation) Rules, 1977*

(vi) *The Karnataka Civil Services (Performance Report) Rules, 1994.*

(vii) *The Karnataka Government Servants (Seniority) Rules, 1957.*

(viii) *The Karnataka Civil Service (Service and Kannada Language Examination) Rules, 1974.*

and all other rules applicable to Government servants relating to recruitment

and conditions of service shall *mutatis mutandis* be applicable to the Board employees.

Explanation: Unless the context otherwise requires, the expressions 'Government Servant', 'Head of Department', 'The Government' or 'the Governor' wherever they occur, in the rules mentioned above shall respectively mean 'Board employee', 'Secretary, 'Board' and 'the Government in Housing Department':

Provided that in case of the Karnataka Civil Services (Service and Kannada Language Examinations) Rules, 1974 any reference to Schedule II of that rules shall be construed as reference made to Schedule II of these rules:

Provided further that in case of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, any reference to Schedule III or IV of that rules shall be construed as reference to Schedule III of these rules.

10. From conjoint reading of the aforesaid provisions, it is evident that the Board has adopted CCA Rules to its employees. Explanation to Rule 5 makes it evident that unless context otherwise requires the expression 'Government Servant', 'Head of Department', 'The Government' or 'The Governor' mentioned in Rules mentioned in Rule 5 of 1999 Rules means 'Board Employee', 'Secretary', 'Board' and 'The Government in Housing Department'. Therefore, while reading Rule 14-A of the 1999 Rules, which empowers the entrustment of enquiry to Lokayukta or Upalokayukta as the case may be, the word shall be read as 'Board'.

11. The petitioners being the employees of the Board are governed by the 1999 Rules as well as CCA Rules. The Board is the appointing authority as well as the disciplinary authority of the petitioners. The State Government, which has entrusted the enquiry to Upalokayukta is neither the appointing authority nor the disciplinary authority.

12. The issue of entrustment of the enquiry by the State Government to Lokayukta or Upalokayukta is in respect of employees of the Board, and the Corporations is no longer res integra and has been examined by a division bench of this court in **R.F. HUDEDAVAR** supra and it has been held that the State Government cannot entrust the enquiry to Upalokayukta under Rule 14-A of the 1999 Rules in respect of an employee of the Board or Corporation. The relevant extract of the judgment in para 25 to 31 read as under:

25. *Section 12 of the KL Act refers to the expression "competent authority" to which the report has to be sent under sub-section (1) of Section 12 of the KL Act, on a preliminary investigation being made on a complaint under Section 9 thereof by the Lokayukta or Upa-lokayukta. The expression "competent authority" in relation to a public servant is defined under Section 2(4) of the KL Act to mean, inter alia, such authority as may be prescribed.*

26. *Rule 3 of the Karnataka Lokayukta Rules, 1985 ('KL Rules' for short), prescribes that in respect of the public servants referred to in sub-clause (d) of clause (4) of Section 2, the Government of Karnataka shall be the Competent Authority. The expression "public servant" is defined in Section 2(12) of the KL Act, to mean, inter alia, a person in the service or pay of, a statutory body or a corporation (not being a local authority) established by or under a State or Central Act, owned or controlled by the State Government and any other Board or Corporation as the State Government may, having regard to its financial interest therein by notification, from time to time, specify; a Company registered under the Companies Act, 1956, in which not less than fifty-one percent of the paid up share capital is held by the State Government, or any company which is a subsidiary of such company.*

27. *Thus, the report submitted under Section 12(2) of the KL Act is to the competent authority. On an analysis of the aforesaid provisions insofar as a Government Company or a Corporation is concerned, an employee*

under the service of such a Company is a public servant and in the case of a public servant, the competent authority is the Government of Karnataka in terms of Rule 3 of the KL Rules.

28. *While the definition of "public servant" is under Section 2(12) of the KL Act, it is noted that Section 2(6) of the said Act defines a "Government Servant" to mean a person who is a member of the Civil Services of the State of Karnataka or who holds a civil post or is serving in connection with the affairs of the State of Karnataka and includes any such person whose services are temporarily placed at the disposal of the Government of India, the Government of another State, a local authority or any person whether incorporated or not, and also any person in the service of the Central or another State Government or a local or other authority whose services are temporarily placed at the disposal of the Government of Karnataka.*

29. *The entrustment of the inquiry in the instant case has been made by the State Government, which is the competent authority*

under Rule 14-A of the CCA Rules, to the Lokayukta, which is questioned by the petitioners herein. It is necessary to note that Rule 14-A of the CCA Rules applies only to Government servants and not public servants. As to the definition of Government servants under CCA Rules is concerned, Rule 2(d) of the CCA Rules defines a "Government Servant" in identical terms as "Government Servant" is defined under the KL Act. The expression 'Government servant' under the CCA Rules does not include within its scope and ambit a 'public servant'. The same is also the position on a reading of the definitions of "Government servant" and "public servant" under the KL Act. Therefore, Rule 14-A of the CCA Rules applies to a "Government servant" and not to a "public servant". That is why the expression "Government servant" is defined under Rule 2(d) of the CCA Rules but the said Rules do not define a "public servant". On the other hand, a reading of Rule 3 of CCA Rules would make the position clear inasmuch as, while the CCA Rules apply to all Government servants, Rule 3 of the CCA Rules is an exception. On a reading of the same, it is

clear that the CCA Rules do not apply to persons for whose appointment and other matters are not covered by those Rules, as special provisions are made by or under any law for the time being in force or in any contract, in regard to the matters covered by such law or such contract. In other words, the CCA Rules would not apply to those public servants who are covered by special provisions or by any contract with regard to matters covered by such law or such contract. Therefore, when there are separate Rules, which are applicable to the employees of a statutory body or a Government Company or a subsidiary of a Government company, the CCA Rules do not apply, just as in the instant cases, there are separate Rules in the form of C&R Rules applicable to the employees of the KRIDL.

30. *Thus, on a conjoint reading of Rule 14-A with Rules 2(d) and 3 of the CCA Rules, it is evident that the CCA Rules are not applicable to the petitioners in the instant cases. Although, the employees of such a statutory body or a Corporation or a Government company are "public servants"*

and therefore, the provisions of KL Act applies to them, they are not "Government servants" within the meaning of Rule 2(d) read with Rule 14-A of the CCA Rules. Thus, even though under the provisions of KL Act and the KL Rules, the competent authority for employees of such a statutory body or a Corporation or a Government Company (who are in any case public servants within the meaning of Section 2(12) of the KL Act) is the Government of Karnataka, but, such employees are "not Government servants" within the meaning of Rules 2(d) and 3 of the CCA Rules. Hence, on receipt of a report under Section 12(2) of the KL Act by the competent authority, namely, the Government of Karnataka, vis-à-vis the employees of such statutory bodies or Corporation or Government Companies, such as KRIDL in the instant case, it has to be sent to the Disciplinary Authority under the C&R Rules of KRIDL for the purpose of taking a decision with regard to the conduct of inquiry and not directly entrust the inquiry to the Lokayukta under Rule 14-A of the CCA Rules. In other words, Rule 14-A of the CCA Rules applies

only to "Government servants" as defined under Rule 2(d) of the CCA Rules and as excepted under Rule 3 thereof. The object of submitting the Report under Section 12(2) of the KL Act to the State Government (competent authority) is to appraise the State Government about the enquiry made against a "public servant" by the Lokayukta/Upa-lokayukta, as the case may be.

31. *Therefore, we find considerable force in the arguments of the learned counsel for the petitioners to the effect that Rule 14-A of the CCA Rules does not apply to the employees of the KRIDL such as the petitioners herein. Even though they may be "public servants" within the meaning of the KL Act, they are not "Government Servants" within the meaning of the said Act as well as CCA Rules. Though the Government of Karnataka is the competent authority under the KL Act, the petitioners, not being Government Servants under the provisions of the CCA Rules, the entrustment of the inquiry under Rule 14-A of the CCA Rules to the Lokayukta is without power and jurisdiction.*

On that short ground alone, orders passed by the State Government entrusting the inquiry to the Lokayukta are liable to be quashed.

13. Similar view has also been taken by another division bench of this court in **SANNAMALLAPPA AND ANOTHER VS. STATE OF KARNATAKA AND OTHERS'**, **(2021) 6 KAR L.J. 424 (DB)**.

14. We are in respectful agreement with the view expressed by a division bench of this court. Therefore, the board alone was competent to entrust the enquiry by considering the report submitted under Section 12(3) of the Act by Upalokayukta and not the State Government.

For the aforementioned reasons, the government order dated 24.06.2016 and the recommendation made by Upalokayukta dated 09.09.2019 are hereby quashed. The Board is however, granted the liberty to consider the report submitted by the Upalokayukta dated 31.08.2019 under Section 12(3) of the Act and to take an appropriate decision in accordance with law within a period of three

months from the date of receipt of certified copy of the order passed today.

Accordingly, the writ petition is disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

SS