



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA

WRIT PETITION NO. 26117 OF 2023 (S-RES)



BETWEEN:

SRI.YATHISH.M.G.,
S/O LATE M.V.GOPAL,
AGED ABOUT 58 YEARS,
WORKING AS SENIOR ENVIRONMENTAL OFFICER
KARNATAKA STATE POLLUTION CONTROL BOARD,
PARISARA BHAVANA, No.49, CHURCH STREET,
BANGALORE-560 001.

R/AT #97, MALOOS PLATINA,
2ND FLOOR, 2ND MAIN, B.C. LAYOUT, CHANDRA
LAYOUT,
VIJAYANAGAR, BANGALORE-560 040.

...PETITIONER

(BY SRI. RAGHAVENDRA.G.GAYATHRI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
DEPARTMENT OF FOREST, ECOLOGY
AND ENVIRONMENT, (ECOLOGY & ENVIRONMENT)
M.S.BUILDING, 7TH FLOOR,
DR.B.R.AMBEDKAR VEEDHI,
BANGALORE-560 001.
2. KARNATAKA STATE POLLUTION CONTROL BOARD
REPRESENTED BY ITS MEMBER SECRETARY,
PARISARA BHAVANA, No.49,
CHURCH STREET, BANGALORE-560 001.





3. THE KARNATAKA LOKAYUKTA,
REPRESENTED BY ITS REGISTRAR,
M.S.BUILDING, DR.B.R.AMBEDKAR VEEDHI,
BANGALORE-560 001.

...RESPONDENTS

- (BY SRI. B.RAVINDRANATH, AGA FOR R-1;
SRI.GURURAJ JOSHI, ADVOCATE FOR R-2;
SRI.ASHWIN.S.HALADY, ADVOCATE FOR R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR RECORDS FROM THE R-1 PERTAINING TO THE ORDER IN REFERENCE NO.APAJEE 135 EPC 2019 DATED 07/09/2023 VIDE ANNEXURE-A PASSED BY THE R-1, ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 20.12.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner was appointed as an Assistant Environmental Officer in the Karnataka State Pollution Control Board ("**the Board**") in the year 1992 and is presently working as a Senior Environmental Officer.
2. The petitioner is aggrieved by the order dated 07.09.2023, by which the State Government in exercise of its powers under Rule 14-A of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 (for short, "**the CCA Rules**") has entrusted the conduct of the



departmental enquiry initiated against him to the Upa-Lokayukta.

3. The facts leading to the above are as follows:
 - a. On 31.08.2017, a complaint was filed by one Sri.H.P.Sheshanna alleging that Jubilant Generics Limited was responsible for polluting the air and water of Kapila river by discharging effluents.
 - b. The petitioner, who was the concerned Environmental Officer, considered the complaint and explained to the complainant that there was no discharge of effluents into the Kapila river by said industry.
 - c. The said Sri.H.P.Sheshanna, not being satisfied with the explanation, proceeded to submit a complaint to the Lokayukta on 23.09.2017 reiterating his complaint regarding the pollution by Jubilant Generics Limited.



- d. On the basis of this complaint, the Lokayukta forwarded the complaint to the petitioner and called upon him to submit his comments and also furnish the relevant documents. In response, the petitioner submitted his reply on 23.10.2017.
- e. The Lokayukta, on consideration of his reply, proceeded to submit a report to the Government under Section 12(3) of the Karnataka Lokayukta Act, 1984 (for short, "**the Lokayukta Act**") recommending the initiation of an enquiry against the Panchayat Development Officer and the petitioner herein. The Upa-Lokayukta also recommended that the enquiry be entrusted to it, as provided under Rule 14-A of the CCA Rules.
- f. On receipt of the above recommendation, the State Government proceeded to issue a notice to the petitioner calling upon him to show-cause as to why disciplinary proceedings should not be initiated against him and called upon the petitioner to



submit a reply to the Board, along with a copy of the report to the Government.

- g. In response, the petitioner submitted his reply putting forth his contention that there was no truth in the allegations made against him and, therefore, there was no justification for conducting an enquiry.
- h. The Board, in turn, sought a report from the Chief Environmental Officer-2 regarding the report under Section 12(3) of the Lokayukta Act submitted by the Upa-Lokayukta. The Chief Environmental Officer, on examining the matter, proceeded to submit a report in which he stated that there were no lapses on the part of the petitioner and there was no justification for conducting an enquiry as recommended by the Upa-Lokayukta.
- i. This report of the Chief Environmental Officer was accepted by the Board *vide* its resolution dated



22.10.2021. It was resolved by the Board not to accept the recommendation of the Upa-Lokayukta and also resolved that an appropriate report be sent to the Government requesting it to close the proceedings.

j. Thereafter, on 08.12.2021, a resolution was passed by the Board with a request to the Government to close the proceedings.

k. Two years thereafter, the impugned order has been passed on 07.09.2023 by the Government deciding to entrust the matter to the Upa-Lokayukta to conduct an enquiry, as provided under Rule 14-A of the CCA Rules.

4. The petitioner is aggrieved by this order of entrusting the enquiry to the Lokayukta and has hence presented this petition.

5. It is the contention of the petitioner that the State Government cannot exercise its powers under Rule 14-A of



the CCA Rules against the petitioner, since the petitioner is an employee of the Board, which is governed by its own Cadre and Recruitment Regulations. It is contended that the power to entrust an enquiry to the Lokayukta under Rule 14-A of the CCA Rules is available only in respect of Government servants and not in respect of the employees of Statutory Boards.

6. The petitioner also contends that a learned Single Judge of this Court in respect of an employee of Karnataka Rural Infrastructure Development Limited ("**KRIDL**") has taken the view that it would not be permissible for the State Government to entrust the enquiry to the Lokayukta in respect of KRIDL employees and, thereafter, the Division Bench of this Court in **W.P. No.12300/2020 (R.F. Hudedavar vs. The State of Karnataka and Others)** has taken the view that the State Government did not have the jurisdiction to entrust the enquiry to the Lokayukta under Rule 14-A of the CCA Rules in respect of employees of KRIDL and on the same principle the



proceedings against the employees of Karnataka Pollution Control Board cannot be entrusted to the Lokayukta or the Upa-Lokayukta under Rule 14-A of the CCA Rules.

7. It is also contended that in respect of employees of the Karnataka Slum Development Board, which is also a Statutory Board, a Co-ordinate Bench has also taken the view that the power of entrustment of enquiry under Rule 14-A of the CCA Rules would not be available to the Government.

8. The petitioner also relies upon a decision of the Division Bench of this Court passed in relation to an employee of another Statutory Board, namely the KIADB, in which the Division Bench has held that when separate Regulations were framed in respect of the KIADB and the KIADB had not adopted the CCA Rules, the power of entrustment of enquiry to the Lokayukta under Rule 14-A of the CCA Rules was impermissible.



9. Reliance is also placed on the decision of the Hon'ble Supreme Court in **Ajit Kumar Nag**¹ to contend that an employee of a Corporation cannot be considered to be holding a Civil Post, as the Corporation cannot be said to be a Department of the Government and the employees cannot thus be considered as employees of the Union.

10. The learned counsel appearing for the Board supported the petitioner and contended that since the Board had got the matter examined in detail and had also secured a report that there were no lapses on the part of the petitioner, the Board was justified in requesting the Government to drop the proceedings. It is, therefore, contended that the Government was not justified in entrusting the enquiry to the Upa-Lokayukta Under Rule 14-A of the CCA Rules.

11. The learned Additional Government Advocate, *per contra*, contended that the Government, being the

¹ *Ajit Kumar Nag v. General Manager, Indian Oil Corpn. Ltd., Haldia & Ors., (2005) 7 SCC 764.*



ultimate authority in respect of not only a Government servant but also in respect of the employees of the statutory Boards, did possess the power to entrust the enquiry in respect of any alleged misconduct of an employee of either the Government or a statutory Board to the Lokayukta or the Upa-Lokayukta.

12. It was contended that the definition of a "government servant" under the CCA Rules includes not only a person who is a member of the Civil Services of the State of Karnataka, but also a person who holds a Civil Post in connection with the affairs of the State of Karnataka. It is, therefore, contended that since any person who holds a Civil post in connection with the affairs of the State of Karnataka is also considered as a Government servant, a person holding a Civil Post in a statutory Board would necessarily be working in connection with the affairs of the State of Karnataka and he would thus be a Government servant for the purposes of the CCA Rules.



13. It was contended that Rule 14-A of the CCA Rules provides for entrusting the enquiry in respect of Government servant if the misconduct alleged has been investigated into by the Lokayukta, either under the provisions of the Lokayukta Act or by the reference of the Government, and this itself indicates that if the conduct of a Government servant including an employee of the statutory Board is investigated, then the Government has been conferred with the power under Rule 14-A to direct an enquiry into the case by the Lokayukta or the Upa-Lokayukta, or direct the appropriate authority to take action in accordance with Rule 12 of the CCA Rules.

14. It is contended that Rule 14-A(2)(a) specifically states that if an investigation into any allegation has been conducted against either a Group-A or Group-B or Group-C or Group-D by the Lokayukta or the Upa-Lokayukta, and the Upa-Lokayukta is of the opinion that disciplinary action should be taken, he is required to forward the investigation along with his recommendation to the



Government and the Government is empowered, after examining such record, to either direct an enquiry to be conducted by the Lokayukta or the Upa-Lokayukta, or also direct the appropriate Disciplinary Authority to take action in accordance with said Rule. It is, therefore, contended that as the Rule specifically enables the Government to take a decision regarding the conduct of the disciplinary enquiry and entrust it to the Lokayukta or the Upa-Lokayukta in the event a Government servant is investigated in respect of any allegation, and it would thus be improper for the petitioner or the Board to contend that the Government does not have the power to entrust the matter to the Upa-Lokayukta under Rule 14-A.

15. It is also contended by the learned Additional Government Advocate that '*the Cadre Services and Recruitment Regulations*' framed for the Board categorically provides for applying the provisions of the CCA Rules to the employees of the Board, insofar as it relates to the procedure for holding the enquiries. It is also



contended that Rule 35 of the Rules framed by the Board also makes it clear that the provisions of the KCSR Conduct Rules and, more importantly, the CCA Rules as well as all other Service Rules applicable to the employees of the Government, were made applicable to the employees of the Board, and therefore, the Government did have the power under Rule 14-A to direct the Upa-Lokayukta to conduct an enquiry under Rule 14-A.

16. In light of the above, the question that arises for consideration in this writ petition is:

"Whether the Government possesses the power to entrust the handling of a disciplinary enquiry in respect of an employee of the Karnataka State Pollution Control Board to the Lokayukta or the Upa-Lokayukta under Rule 14-A of the CCA Rules.

17. An incidental question would also arise for consideration in this writ petition and that is:



Whether the Lokayukta and the Upa-Lokayukta, while making a recommendation under Section 12(3) of the Lokayukta Act to conduct a departmental enquiry against an employee, also possess the power to make a recommendation to the Government that the handling of departmental enquiry should be entrusted to it under Rule 14-A?

18. As could be seen from the facts narrated above, it is not in dispute that the petitioner, an employee of the Karnataka State Pollution Control Board, was subjected to an investigation under the provisions of the Lokayukta Act and the Upa- Lokayukta made a recommendation under Section 12(3) of the Lokayukta Act for conducting departmental proceedings against the petitioner. The relevant portion of the recommendation is as follows –

“9. ಅದಲ್ಲದೆ, 1 ಮತ್ತು 2ನೇ ಎದುರುದಾರರುಗಳು ಸರ್ಕಾರಿ ನೌಕರರಾಗಿದ್ದು ಕರ್ನಾಟಕ ನಾಗರಿಕ ಸೇವಾ (ನಡತೆ) ನಿಯಮಾವಳಿ, 1966ರ ನಿಯಮ 3(1)ರ ಅಡಿಯಲ್ಲಿ ದುರ್ನಡತೆ/ದುವರ್ತನೆ ಕಂಡು ಬರುವುದರಿಂದ, ಸದರಿಯವರ ವಿರುದ್ಧ ಇಲಾಖಾ ಶಿಸ್ತು ಕ್ರಮ ಕೈಗೊಳ್ಳಲು ಕರ್ನಾಟಕ



ಲೋಕಾಯುಕ್ತ ಕಾಯಿದೆ ಕಲಂ 12(3)ರ ಅಡಿ ಪ್ರದತ್ತವಾದ ಅಧಿಕಾರದಡಿ, ಈಗ, ಈ ವರದಿ ಮೂಲಕ, ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರಕ್ಕೆ ಶಿಫಾರಸ್ಸು ಮಾಡಲಾಗುತ್ತಿದೆ, ಹಾಗೂ 1 ಮತ್ತು 2ನೇ ಎದುರುದಾರರುಗಳ ವಿರುದ್ಧದ ಇಲಾಖಾ ವಿಚಾರಣೆ ಮಾಡಲು, ಕರ್ನಾಟಕ ನಾಗರಿಕ ಸೇವಾ (ವರ್ಗೀಕರಣ, ನಿಯಂತ್ರಣ ಮತ್ತು ಮೇಲ್ಮನವಿ) ನಿಯಮಾವಳಿ 1957ರ ನಿಯಮ 14(ಎ) ರಡಿ ಈ ಸಂಸ್ಥೆಗೆ ವಹಿಸಿ ಬೇಕೆಂದೂ ಕೋರಿದೆ.

10. ಹಾಗೆಯೇ, ಕರ್ನಾಟಕ ಲೋಕಾಯುಕ್ತ ಕಾಯಿದೆ 1984 ಕಲಂ 12(4)ರ ಪ್ರಕಾರ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರವು, ಈ ವರದಿಯ ಮೇಲೆ ಏನು ಕ್ರಮ ಕೈಗೊಂಡಿದೆ ಅಥವಾ ಏನು ಕ್ರಮ ಕೈಗೊಳ್ಳಲಾಗುತ್ತದೆ ಎಂಬುದರ ಬಗ್ಗೆ ಈ ವರದಿಯನ್ನು ಸ್ವೀಕರಿಸಿದ ಮೂರು ತಿಂಗಳೊಳಗೆ ಈ ಪ್ರಾಧಿಕಾರಕ್ಕೆ ತಿಳಿಸಲು ಹೇಳಿದೆ.”

19. The Karnataka State Pollution Control Board has framed the Cadre, Recruitment and Condition of Service Regulations in the year 1992 for its employees. Regulation 34 deals with Classification, Control and Appeal. Regulation 34(A1), which would be relevant for the purpose of this case, reads as follows –

“34. CLASSIFICATION, CONTROL AND APPEAL:

A1) The provisions of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 as amended from time to time shall be applicable to the employees of the Board in so far as the procedure for holding the enquires, the procedure for imposition of penalties and the communication of orders are concerned;



Provided that the appointing authority and the authority competent to impose the penalties and the appellate authority shall be as specified in the Schedule-III to these Regulations.

Penalties: One or more of the following penalties for good and sufficient reasons and as hereinafter provided may be imposed on the Officials of the Board by the authorities and to the extent of powers specified in the Schedule-III;

- (i) fine in the case of officials of the Board belonging to Group-D Service;
- (ii) Censure;
- (iii) withholding of increment;
- (iiia) withholding of promotion;
- (iv) recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders to the Board, Central Government, any State Government, any person, body or authority to whom the services of the officer had been lent;
- (iv-a) reduction to a lower stage in the time-scale of pay for a period with a specific direction as to whether or not the Official of the Board will earn increments of pay or during the period of such reduction with reference to the reduced pay or whether the pay shall remain constant and with further direction whether on the expiry of the period of penalty, the reduction will or will not have the effect of postponing the future increments of his pay;
- (v) Reduction to a lower time-scale of pay, grade, post or service which shall, unless otherwise directed, be a bar to the promotion of the



official of the Board to the time-scale of pay, grade, post or service from which he was reduced, with or without further direction regarding:

- a) seniority and pay in the scale of pay, grade, post or service to which the official of the Board is reduced;
 - b) conditions of restoration to the scale of pay, grade or service to which the official of the Board was reduced and his seniority and pay on such restoration to that scale of pay, grade, post or service;
- (vi) Compulsory retirement;
 - (vii) Removal from service which shall not be a disqualification for future employment;
 - (viii) Dismissal from service which shall ordinarily be a disqualification for future employment

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the order of the disciplinary authority, no penalty other than those specified in (vi) to (vii) above shall be imposed for an established charge of corruption.

Explanation-1: For purpose of this proviso, the expression corruption shall have the meaning assigned to the expression 'Criminal misconduct in discharge of official duty' in Section 13 of the Prevention of Corruption Act, 1988, or the meaning assigned to the expression "taking gratification other than legal remuneration in respect of an official act" and "obtaining valuable thing without consideration" in sections 161 and 165 respectively of the Indian Penal Code.

Explanation-2: The following shall not amount to an penalty within the meaning of this regulation:-

- i) withholding of increments of employee/official of the Board for failure to pass a departmental examination in



accordance with the regulations or orders governing the Service or post or the terms of his appointment.

ii) stoppage of the official of the Board at the efficiency bar in the time-scale on the ground of this unfitness to cross the bar;

iii) non-promotion, whether in a substantive or officiating capacity, of an official of the Board, after consideration of his case, to a service, grade or post for promotion to which he is eligible;

iv) reversion to a lower Service, grade or post an employee/official of the Board officiating in a higher service, grade or post on the ground that he is considered, after trial to be unsuitable for such higher service, grade or post or on administrative grounds unconnected with his conduct (such as the return of the permanent incumbent from leave or deputation, availability of a more suitable officer and the like);

v) reversion to his permanent service, grade or post of an official of the Board appointed on probation to another service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment, regulations, or orders governing probation;

vi) compulsory retirement of an official of the Board in accordance with the provision relating to his superannuation of retirement;

vii) termination of the services:

- a) of a person employed under an agreement, in accordance with the terms of such agreement;
or
- b) of an official of the Board appointed on probation, during or at the end of the period of



his probation, in accordance with the terms of his appointment, regulations, orders governing such probation.”

20. As could be seen from the above, the said Regulation expressly states that the provisions of the CCA Rules, as amended from time to time, shall be applicable to the employees of the Board, in so far as:

- a. the procedure prescribed in the enquiries,
- b. the procedure for imposition of penalties and
- c. the communication of the orders, are concerned.

21. It is, therefore, clear that the provisions of the CCA Rules are expressly made applicable to the employees of the Board in relation to the procedure prescribed for conducting enquiries in respect of the employees of the Board. If the provisions of the CCA Rules are expressly made applicable to the employees of the Board, it is obvious that Rule 14-A would also stand automatically attracted in respect of an employee of the Board.



22. Under the CCA Rules, the Authority to institute disciplinary proceedings is governed by **Rule 10A²**. Sub Rule (1)(a) empowers the Governor or any other Authority empowered by him to institute disciplinary proceedings against any Government servant. Sub Rule (1)(b) also empowers the Governor to direct any Disciplinary Authority to institute disciplinary proceedings.

23. Sub-rule (2) of Rule 10A empowers the Disciplinary Authority empowered under Rule 8 (i) to (iv-a) to institute the proceedings against any Government servant for the imposition of penalties specified in 8 (v) to (viii), even if he is not competent to impose any of the latter penalties. Thus, the Authority to institute disciplinary proceedings is specified under the CCA Rules.

² **10A. Authority to institute proceedings, -**

(1) The Governor or any other authority empowered by him by general or special order may, -

- (a) institute disciplinary proceedings against any Government servant;
- (b) direct a Disciplinary Authority to institute disciplinary proceedings against any Government servant on whom that Disciplinary authority is competent to impose under these rules any of the penalties specified in rule 8.

(2) A Disciplinary Authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv-a) of rule 8 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in clauses (v) to (viii) of rule 8 notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties.



24. However, Rule 14A of the CCA Rules makes an exception in the matter of instituting disciplinary proceedings:

“14A. Procedure in cases entrusted to the Lokayukta, -

(1) The provisions of sub rule (2) shall, notwithstanding anything contained in rule 9 to 11A and 13, be applicable for purposes of proceeding against Government Servants whose alleged misconduct has been investigated into by the Lokayuukta or an Uplokayukta either under the provisions of the Karnataka Lokayukta Act, 1984 or on a reference from Government]1 2[or where offences alleged against them punishable under the Prevention of Corruption Act, 1947 or the Prevention of Corruption Act, 1988 has been investigated by the Karnataka Lokayukta Police before 21st day of December, 1992.]2

1[2] (a) Where on investigation into any allegation against

(i) a member of the State Civil Services Group-“A” or Group-“B” or

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

(iii) a member of the State Civil Services Group-“C” or Group-“D” The Lokayukta or the Upa-lokayukta or (before the twenty first day of December, 1922) the



Inspector General of Police of the Karnataka Lokayukta Police is of the opinion]3that disciplinary proceedings shall be taken, he shall forward the record of the investigation along with his recommendation to the Government and the Government after examining such record, may either direct an inquiry into the case by the Lokayukta or the Upalokayukta or direct the appropriate Disciplinary Authority to take action in accordance with rule 12.

(b) Where it is proposed to hold an inquiry into a case under clause (a) the enquiry may be conducted either by the Lokayukta or the Upalokayukta, as the sae may be, or an officer on the staff of the Lokayukta authorized by the Lokayukta, or the Upalokayukta to conduct the inquiry;

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

Provided further that an inquiry against a Government Servant not lower in rank than that of a Deputy Commissioner shall not be conducted by any person other than the Lokayukta or the Upalokayukta or an Additional Registrar (Inquiries).

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



(c) The Lokayukta, the Upalokayukta or the Officer authorized under clause (b) to conduct an inquiry shall conduct it in accordance with the provisions of rule 11 in so far as they are not inconsistent with the provisions of this rule and for that purpose shall have the powers of the Disciplinary Authority referred to in the said Rule.

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

(e) On receipt under clause (d) the Government shall take action in accordance with the provisions of 4[xxx]4rule 11A and in all such cases the Government shall be the Disciplinary Authority competent to impose any of the penalties specified in rule 8.

(3) Nothing in sub-rule (1) shall be applicable to members of the Karnataka Judicial Service or Government servants under the administrative control of such members or of the High Court of Karnataka. Explanation, -In this rule, the expressions "Lokayukta" and "Upalokayukta" shall respectively have the meaning assigned to them in the Karnataka Lokayukta Act, 1984)]1 2[and the expression "Karnataka Lokayukta Police" means the Police Wing established under Section 15 of the Karnataka Lokayukta Act, 1984 and includes, so far as may be, the corresponding establishment under the Karnataka State Vigilance



Commission Rules, 1980 and the expression "Inspector General of Police" shall be construed accordingly.

2. Interpretation, -In these rules, unless the context otherwise requires-

(d) "Government Servant" means a person who is a member of the Civil Services of the State of Karnataka or who hold a Civil post in connection with the affairs of the State of State of Karnataka and includes any person whose services are temporarily placed at the disposal of the Government of India, the Government of another State, a local authority, any person or persons 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."

25. As could be seen from the above extract, by virtue of the non obstante clause, this Rule permits the State Government to be the Authority, not only to institute the proceedings but also to entrust the enquiry either to the Lokayukta, the Upa-Lokayukta or the Disciplinary Authority, in respect of the cases specified therein.

26. To be more precise, in the event, an enquiry is conducted in respect of an allegation by the Lokayukta or



the Upa-Lokayukta and they are of the opinion that disciplinary proceedings should be initiated, they are required to forward the records of the investigation along with their recommendation to the Government and the Government is thereafter required to examine such records and either direct an enquiry to be conducted by the Lokayukta or the Upa-Lokayukta or proceed to direct the Disciplinary Authority to conduct the enquiry.

27. Thus, whenever any investigation is conducted into any allegation by the Lokayukta or the Upa-Lokayukta, the power to institute disciplinary proceedings essentially lies with the Government, and the Government, on examining the records of the investigation and the recommendation, has been given the option to entrust the enquiry to any of these three entities – the Lokayukta, the Upa-Lokayukta or the respective Disciplinary Authority.

28. However, it is averred that even if the CCA Rules have been made applicable, it is only the Disciplinary Authority of the Board which can entrust the matter to the



Lokayukta or the Upa-Lokayukta under Rule 14-A and not the Government. This argument cannot be accepted for two reasons: *firstly*, because, as stated above, the power to entrust the enquiry after an investigation is conducted under the Lokayukta Act would lie only with the Government; and, *secondly*, because of the definition of a “government servant” under the CCA Rules. Rule 2(d) of the CCA Rules read as under:

“d) “Government Servant” means a person who is a member of the Civil Services of the State of Karnataka or who hold a Civil post in connection with the affairs of the State of Karnataka and includes any person whose services are temporarily placed at the disposal of the Government of India, the Government of another State, a local authority, any person or persons 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. As could be seen from the above, the definition is in three parts. The first part expressly states that a person who is a Member of the Civil Services of the State of



Karnataka is a "government servant". The second part, i.e., a person 'who holds a Civil Post in connection with the affairs of the State of Karnataka' would obviously mean that it is a person who is not a member of the Civil Services of the State of Karnataka but is a person who is holding a Civil Post in connection with the affairs of the State of Karnataka.

30. The third part of the definition, which includes a person who is temporarily placed at the disposal of the Government of India and the Government of another State or local Authority or any other person who is in service of Central or State Government whose services are temporarily placed at the disposal of the Government of Karnataka, would not be relevant for the purposes of the instant case.

31. The second part of the definition would clearly bring within its purview any person who holds a Civil Post in connection with the affairs of the State of Karnataka. In other words, even if a person is holding a post in



connection with the affairs of the State of Karnataka, he is deemed to be a “government servant” for the purposes of the CCA Rules. It cannot be in dispute that an employee who is working in a statutory Board, such as the Pollution Control Board, would definitely be holding a post in connection with the affairs of the State of Karnataka and, thus, it is obvious that an employee of the Board would have to be considered as a “government servant” for the purposes of the CCA Rules. It is obviously for this reason that Regulation 34(A1) also makes the CCA Rules applicable to the employees of the Board.

32. In the context of this case, it is indisputable that the Karnataka State Pollution Control Board is working in respect of the environmental affairs of the State of Karnataka, and therefore, any person who is holding a Civil Post in such an entity would necessarily have to be a government servant. Since the entire CCA Rules have been made applicable under Regulation 34(A1), the power of entrustment of enquiries by the Government to the



Lokayukta or the Upa-Lokayukta cannot be denied. It is, therefore, clear that in respect of an employee of the Karnataka State Pollution Control Board, in the face of Regulation 34(A1), the Government would have the power to entrust the enquiry to the Lokayukta and it is not the Disciplinary Authority of the employee-Board.

33. The matter could be looked at from another angle as well.

34. The Karnataka State Pollution Control Board has been constituted in exercise of the powers conferred under Section 4 of the Water (Prevention and Control of Pollution) Act, 1974 ("**the Water Act**"). By virtue of Section 4, the State of Karnataka is obligated to constitute the Board and this Board is conferred with certain functions as specified in Section 17 of this Act. Section 18 of the Water Act expressly states that every State Board would be bound by the directions given in writing, either by the Central Board or by the State Government in the performance of its functions under the Act.



35. If the State Government is statutorily empowered under the Act, under which the Board has been constituted, to give directions in writing for performance of its functions, the power of the Government to direct the Upa-Lokayukta to conduct an enquiry in exercise of Rule 14-A cannot be denied. Section 18 of the Water Act basically recognises the inherent power in the State Government to issue directions to the Board that it has constituted, in exercise of the powers conferred on it under the statute. It would be improper and irrational to contend that the State Government, which constitutes the Board under the statute, would not possess the power to issue a direction to the Board to entrust the conduct of an enquiry to the Ombudsman such as the Lokayukta or the Upa-Lokayukta.

36. It is thus clear that even *de hors* the Rules framed under Article 309, i.e., the CCA Rules, the State Government has the substantive power under Section 18 of the Act to give directions to the Board in performance of



its functions under the Act and if the State Government is of the view that an employee of the Board has failed in his duty to contain or prevent pollution, the State Government must necessarily be having the power to direct an enquiry to be conducted against such erring employee.

37. It is quite probable that the Board would, in some cases, wish to protect its employees and prevent the Government from entrusting the enquiry to an independent body such as the Lokayukta. It is in this context that it would be necessary to recognise the power of the State Government under Section 18 and state that it would indeed possess the power to either direct the Board to conduct an enquiry or entrust the enquiry to the Lokayukta or the Upa-Lokayukta.

38. As could be seen from the resolution of the Board in the present case, the Board itself made a request to the Government to close the proceedings, which, by itself, indicates that the Board was also conscious of the fact that the Government was required to give its approval for



closure of the proceedings. Given the background that the matter was investigated by the Lokayukta under the provisions of the Lokayukta Act, the Board has also recognised the fact that the Government should have a say in the matter and, in essence, the Board was clearly acknowledging the power of the Government in this matter.

39. The main arguments advanced by the petitioner, however, is based on the judgments rendered by two Division Benches of this Court and two judgments rendered by a co-ordinate Bench.

40. The first judgment relied upon is rendered in W.P. Nos.1983-86/2014 on 01.09.2014. In this case, the Division Bench dealt with the issue regarding the entrustment of an enquiry in respect of an official of the Karnataka Industrial Areas Development Board, which is also a statutory Board constituted under the Karnataka Industrial Areas Development Act, 1966. In the said case, the Division Bench has categorically observed as follows-



"7. The learned counsel for the respondent No.4 does not dispute that the employees of the KIADB are not governed by Karnataka Civil Services (Classification, Control and Appeal) Rules.

8. When separate service regulations are framed by respondent No.4 and when it has not adopted the Karnataka Civil Services (Classification, Control and Appeal) Rules, question of entrusting the enquiry to respondent No.2 or respondent No.3 by the respondent No.4 does not arise."

41. As could be seen from the above-extracted paragraphs, it was admitted by the KIADB in that Writ Petition that its employees were not governed by the CCA Rules and it was found that there were separate Service Regulations framed by the Board and the CCA Rules were not adopted. In the context of that case, it was held that entrustment of an enquiry by the Government under Rule 14-A would not lie. In the present case, as already stated above, the CCA Rules are made applicable to the employees of the Board by virtue of Regulation 34(A1) of the Regulations framed by the Board itself and it is hence clear that said decision would be of no assistance to the case of the petitioner.



42. The second judgment relied upon is also on the basis of an employee of the KIADB i.e., in the case of ***K.S.Shivalingappa***³. In the said judgment, the Division Bench has followed the ruling rendered in W.P. Nos.1983-86/2014. In light of the discussion made in respect of the decision of the Division Bench in the case of W.P. Nos.1983-86/2014, this judgment would also not be applicable.

43. The third judgment relied upon by the learned counsel for the petitioner is the decision of a Division Bench rendered in W.P. No.12300/2020. In this case, the Division Bench has considered the question as to whether in respect of an employee belonging to the Karnataka Rural Infrastructure Development Limited, which was a Government Company, an enquiry could be entrusted by the Government under Rule 14-A to the Lokayukta or the Upa-Lokayukta. The Division Bench in said case held that Rule 14-A of the CCA Rules was applicable only to

³ *K.S. Shivalingappa v. State of Karnataka and Others*, 2016 SCC Online 8763



Government servants and not to public servants. The Division Bench has stated as follows:

“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. "

44. Thus, as could be seen from said decision, in a case involving a Government Company which did not have its own statutory regulations for disciplinary action, the Division Bench has held that the State Government, when not mentioned as the Disciplinary Authority, is required to submit the report to the Disciplinary Authority, and the Disciplinary Authority, under the relevant Cadre and Recruitment Rules of the entity in which the public servant was employed, could entrust the enquiry to the Lokayukta if Rule 14-A has been adopted or, alternatively, if the cadre and recruitment had expressly stated that it was permissible for the entrustment of the enquiry to the Lokayukta and the Upa-Lokayukta, and those situations were covered under the Rules, the State Government had the power to entrust the enquiry under Rule 14-A of the CCA Rules and not otherwise. Thus, this judgment can also be of no assistance in the present case since the



Regulations framed by the Board itself provides for the application of the CCA Rules.

45. Furthermore, co-ordinate Benches of this Court in W.P. No.8374/2019 had dealt with the case relating to an employee of the KRIDL and the co-ordinate Bench has taken a view that unless the CCA Rules were specifically adopted, reliance cannot be placed on a residuary rule to entrust the enquiry to the hands of the Lokayukta. As already stated above, this reasoning would have no application in this case, in light of Regulation 34(A1).

46. In the other judgement passed by a co-ordinate Bench of this Court in W.P. No.10558/2018, the Co-ordinate Bench has relied upon the decision rendered by the Division Bench in the case of **R.F. Hudedavar** (*supra*) and has concluded therein that the Karnataka Slum Clearance Board had specifically adopted the CCA Rules for the Board employees. It was also observed that it could entrust the enquiry to the Lokayukta only if Rule 14-A had been adopted. It has also been held that the C & R Rules



expressly prescribe the entrustment of the enquiry to the Lokayukta or the Upa-Lokayukta. Since, in the instant case, the Rules framed by the Pollution Control Board expressly makes the provisions of the CCA Rules applicable, the power of the Government to entrust the enquiry under Rule 14-A cannot be denied. It is therefore clear that the judgments relied upon by the learned counsel for the petitioner can have no application to the facts of this case.

47. In this case, as stated above, the CCA Rules have been specifically made applicable to the employees of the Board and the judgments rendered by the Division Bench referred to above, in which the CCA Rules had not been made applicable, would have no application.

48. It is, therefore, clear that the stand of the Board that the State Government does not have the power to entrust the enquiry to the Lokayukta under Rule 14-A cannot be accepted. In view of the above discussion, it is clear that the Government does possess the power to entrust the



matter to the Lokayukta whenever an investigation has been undertaken by the Lokayukta or the Upa-Lokayukta in respect of a public servant, which, by the terms of the definition, also includes a "government servant". The first question framed is answered accordingly.

49. As already held above, the power of the Government to entrust the enquiry to the Lokayukta or the Upa-Lokayukta cannot be in doubt. However, a reading of the report submitted to the Government under Section 12(3) of the Lokayukta Act makes it clear that the Upa-Lokayukta not only made a recommendation to hold a disciplinary proceeding against the petitioner, but it went on to also state that the Government should entrust the enquiry to it.

50. In light of this recommendation, it will have to be considered as to whether such power is available to the Upa-Lokayukta to make such a recommendation, in so far as it relates to the entrustment of the enquiry or whether



the Government is required to take a decision independently.

51. Under the provisions of the Lokayukta Act, on receipt of a complaint involving a grievance or an allegation against a public servant, the Lokayukta is empowered to investigate into it. The Lokayukta is essentially an Ombudsman who is required to independently conduct an investigation in respect of a grievance or an allegation.

52. A "grievance" is defined under the Lokayukta Act to mean a claim by a person that he has sustained injustice or undue hardship in consequence of maladministration, while an "allegation" in relation to a public servant has been defined to mean a situation where a public servant has abused his position to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person; the discharge of his functions was actuated by personal interest or improper/corrupt motives or that he was guilty of corruption, favouritism, nepotism or lack of integrity in his



capacity or that he has failed to act in accordance with the norms of integrity which ought to be followed.

53. The Lokayukta Act is an enactment which provides for creation of authorities for making enquiries into administrative action relatable to state affairs against a government servant. A "government servant" in this Act is defined in the same manner as in the CCA Rules and, thus, it is clear that an employee of the Board would also be a "government servant" for the purposes of said Act. It may be pertinent to state here that a "public servant" has been defined under the Lokayukta Act to include a Government servant also and for this reason, an employee of the Board would also be liable for an investigation.

54. Section 7 (1)(a) of the Lokayukta Act provides for the Lokayukta to investigate any action taken by the Chief Minister, a Minister, a Member of the State Legislature or a Chairman/Vice-Chairman of an authority, committee, statutory or non-statutory board or a corporation established by any law, including a society, co-operative



society or a Government company in any case where a complaint involving a grievance or an allegation is made in respect of any action.

55. Section 7 (1)(b) empowers the investigation to be conducted in respect of any action taken by a public servant holding a post or office with pay of more than Rs.20,000/- in respect of any action taken by such public servant which involves a complaint with a grievance or an allegation is made in respect of any action.

56. Section 7(2) empowers the Upa-Lokayukta to investigate any action taken by a public servant in any case where a complaint involving a grievance, or an allegation is made in respect of any action. The Upa-Lokayukta would however have to form an opinion and record it in writing before conducting an investigation. Thus, in respect of a public servant (which also includes a Government servant by virtue of the definition of a "public servant" under Section 2(12) of the Lokayukta Act), the Upa-Lokayukta is empowered to investigate.



57. Section 9 of the Lokayukta Act provides for a person to give a complaint in the form of a statement supported by an affidavit and on receipt of the complaint, the Lokayukta or the Upa-Lokayukta could undertake a preliminary enquiry, and thereafter, if it wishes to propose to conduct an investigation, it would be required to forward a copy of the complaint to the public servant concerned and afford an opportunity to such public servant to offer his comments.

58. The Lokayukta is also empowered to issue search warrants and require public servants to furnish information for the purposes of conducting an investigation.

59. After conducting an investigation, in respect of a grievance, if the Lokayukta is satisfied that such action has resulted in injustice or undue hardship to the complainant, it is mandated to submit a report in writing and recommend to the competent authority concerned that such injustice or undue hardship is remedied or redressed in such manner and within the period specified



in the report as stipulated in Section 12(1) of the Lokayukta Act.

60. The competent authority, on receipt of the report under Section 12(1) of the Lokayukta Act, is required to then intimate the Lokayukta or the Upa-Lokayukta, within one month, the action that has been taken on the report as stipulated in Section 12(2) of the Lokayukta Act.

61. In the case of an allegation, if the Lokayukta or the Upa-Lokayukta is satisfied that such an allegation was substantiated either wholly or in part, it is required to report in writing its findings and recommendations along with the relevant documents and material and evidence to the competent authority as provided under Section 12(3) of the Lokayukta Act.

62. The competent authority is required to examine the report submitted under Section 12(3) of the Lokayukta Act within three months and intimate the Lokayukta or the Upa-Lokayukta regarding the action taken by it or the



action that it proposes to take on the basis of the report as stated in Section 12(4) of the Lokayukta Act.

63. Section 12(4) of the Lokayukta Act states that if the Lokayukta or the Upa-Lokayukta is satisfied with the action taken by the competent authority, it should close the proceedings. If, on the other hand, it is not satisfied with the action taken, it is empowered to make a special report to the Governor and also inform the competent authority and the complainant of this decision.

64. On a plain reading of Section 12(3) and (4) of the Lokayukta Act, it is obvious that the power to make a recommendation in respect of allegation vests with the Lokayukta or the Upa-Lokayukta, which can call upon the competent authority to act according to its recommendation and if it is not satisfied with the action taken, it can only submit a special report to the Governor. In other words, the Lokayukta or the Upa-Lokayukta is only a recommendatory body and it cannot enforce its



decision, and if its recommendations are not acted upon, it can only submit a report to the Governor.

65. In respect of the report regarding an allegation, it cannot be in doubt that one of the recommendations that can be made by the Lokayukta or the Upa-Lokayukta is for a departmental enquiry to be initiated against the public servant (which includes a "government servant" as per the definition). But the Lokayukta cannot recommend that the departmental enquiry should be conducted by it alone. This is because Rule 14A of the CCA Rules confers exclusive power on the Government to decide whether the enquiry is to be conducted by the Lokayukta, the Upa-Lokayukta or the Disciplinary Authority, and this power cannot be curtailed or circumscribed by a direction of the Lokayukta or the Upa-Lokayukta. In a sense, by recommending that the enquiry is to be entrusted to it, the Lokayukta or the Upa-Lokayukta would basically be usurping the power available only to the Government, under Rule 14A of the CCA Rules.



66. It is to be noticed here that Section 12(3) of the Lokayukta Act contemplates the communication of the findings of the Lokayukta and its recommendations to the competent authority, and Section 12(4) of the Lokayukta Act mandates that the competent authority should examine the report forwarded to it and intimate the Lokayukta, within three months thereafter, the action taken by it or the action that it proposes to take on the basis of the report. It is, therefore, clear that the decision to take appropriate action/proposed action should rest entirely with the competent authority. If the Lokayukta or the Upa-Lokayukta were to say that it should be given the power to take remedial action by itself, that would basically be in contravention of Section 12(4) of the Lokayukta Act and it would translate into the Lokayukta or the Upa-Lokayukta to transform itself into an enforcement body as against the contemplation of the Act that it is only a recommendatory body. If Section 12(4) of the Lokayukta Act confers power expressly on the competent authority to take action, the Lokayukta cannot, in the guise of making



recommendations, require the competent authority to take the action as directed by it.

67. As already notice above, Section 12(5) of the Lokayukta Act stipulates that if the Lokayukta or the Upa-Lokayukta is not satisfied with the action taken, he is required to close the case, and if he is not so satisfied with the action taken, he is empowered to make a special report upon the case to the Governor and also inform the competent authority concerned and the complainant. It is, therefore, clear that the Lokayukta cannot direct the competent authority that it should be given the responsibility of taking the action, in the guise of making a recommendation.

68. In the context of this case, the Lokayukta, no doubt, under Section 12(3) of the Act has the power to make a recommendation to the competent authority to conduct departmental enquiry. However, it would not have the power to direct the competent authority to entrust the enquiry to it under Rule 14-A. It must be kept in mind that



the power available under Rule 14-A is to the Government, and the Government can, in the cases referred to in Rule 14-A, entrust the enquiry either to the Lokayukta, the Upa-Lokayukta or the Disciplinary Authority. Therefore, the Lokayukta cannot be permitted to say that the enquiry should necessarily be entrusted to it.

69. The matter can also be looked at from another angle. The Lokayukta or the Upa-Lokayukta upon investigation is empowered to form an opinion and record a finding regarding the complaint that it has received and submit a report along with its recommendation. This finding is recorded on the receipt of the comments by the public servant in response to the complaint and the records it has collected in relation to the allegation. If, on the basis of the comments of the public servant in response to the complaint, a finding is recorded of probable wrongdoing or definite wrongdoing by a public servant, the Lokayukta would necessarily have formed an opinion against the public servant and judged his/her conduct. If, in the guise



of making a recommendation or the Upa-Lokayukta has already formed an opinion about the wrongdoing, it would have already judged the conduct of the public servant, and in such a situation, if the Lokayukta or the Upa-Lokayukta were to thereafter be permitted to conduct an enquiry, it would obviously be conducting the enquiry with an inherent sense of bias, which has already been manifested and expressed in the Section 12(3) report itself.

70. If this is viewed from the context of a public servant, it would be clear that he would be carrying the definite perception that the Lokayukta or the Upa-Lokayukta had already made up its mind about his conduct since it had already made a recommendation that action should be taken against him. Consequently, if the same authority also recommends that it should be entrusted with the task of holding an enquiry, in the mind of a public servant, the outcome would be a foregone conclusion.

71. It is to be kept in kind that the fundamental principle that 'justice should not only be done but it should also



seem to be done' should not be lost sight of and should be applied in its true spirit. In light of this principle, the entrustment of the enquiry to the Lokayukta or the Upa-Lokayukta would be wrong and would lead to a perception of inherent bias from the point of view of the public servant.

72. In this view of the matter, the recommendation by the Lokayukta to the Government, while making a report under Section 12(3) of the Lokayukta Act, that the enquiry be entrusted to it, cannot be sustained. Consequently, while upholding the power of the Government to entrust the enquiry in respect of an employee of the Board under Rule 14-A, it is, however, held that the Lokayukta does not have the power to make a recommendation that the enquiry should be entrusted to it only. Thus, to that extent, the recommendation is ***quashed***.

73. The State Government would be at liberty to apply its mind independently to the recommendation, to conduct an enquiry against the petitioner and take a decision as to



whether the enquiry is required to be entrusted to the Lokayukta, the Upa-Lokayukta or the Disciplinary Authority of the petitioner, as contemplated under Rule 14-A of the CCA Rules. It is once again emphasised that the Government should not be influenced by the recommendation made by the Upa-Lokayukta to entrust the enquiry to it and it is required to take an independent decision.

74. Writ Petition is, accordingly, ***disposed of.***

**Sd/-
JUDGE**