

M. Nagaraj Vs. State of Karnataka

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Court : Karnataka

Decided On : Nov-30-2001

Reported in : 2002CriLJ903

Judge : K. Sreedhar Rao, J.

Acts : [Prevention of Corruption Act, 1988](#) - Sections 7, 13(1), 13(2), 17 and 19; Karnataka Lokayukta/Upa-Lokayukta Act, 1984; Karnataka State Vigilance Commission's Rules, 1980 - Rule 5(2); Karnataka Lokayukta/Upa-Lokayukta Rules - Rule 12; Karnataka Electricity Board Employees' (Classification, Disciplinary and Control and Appeal) Regulations, 1987 - Regulations 9, 9(1), 9(3), 10 to 11A, 12, 13 14A; Code of Criminal Procedure (CrPC) - Sections 2 and 227

Appeal No. : Cri. Petn. No. 1232 of 2001

Appellant : M. Nagaraj

Respondent : State of Karnataka

Advocate for Def. : S. Bhavani Singh, Govt. Pleader

Advocate for Pet/Ap. : M.S. Venugopal, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

1. Criminal Petition No. 1232/2001 is filed against the order passed in Special Case No. 43 of 1995 on the file of the Special Judge cum Principal Sessions Judge; Belgaum.

2. The petitioner in Crl. P. 1232/2001 is charge-sheeted for an offence punishable under Sections 7, 13(1)(d) of the Prevention of Corruption Act by the Lokayukta Police, Belgaum on the allegation that the petitioner is employed as Assistant Engineer, K.E.B. Belgaum Division. While discharging his official duties alleged to have demanded and accepted illegal gratification of Rs. 30000/-from one Abbasaheb Surendra Hulamani a K.E.S. Contractor to get his bill sanctioned.

The Lokayuktha Police laid the trap successfully, on completion of investigation, obtained the sanction order from the Chief Engineer Electricity (General) Bangalore, K.E.S. and filed the charge sheet.

3. The accused made an application I.A.I. under Section 227, Cr. P.C. seeking discharge on the ground that no valid sanction is obtained for prosecution under Section 19 of the Prevention of Corruption Act.

3A. Before the trial Court, the ruling of this Court in Criminal Petition No. 821/96, Jaffar Khan v. State by Police Inspector Bureau of Investigation, Karnataka Lokayukta was relied on in support of the contention that the employees of the K.E.B. are governed by the Karnataka Electricity Board Employees' (Classification, Disciplinary and Control and Appeal) Regulations, 1987 and Regulation 14A. Sub-clause (e) empowers the Board to impose the penalty on the delinquent employee whose alleged misconduct investigated into by the Lokayuktha, therefore argued that sanction accorded by the Chief Engineer is invalid and that the Board alone is competent to accord sanction. The trial Court rejected I.A.I. Being aggrieved, the present petition is filed.

4. The provisions of Regulation 10 of the K.E.B. (Classification, Disciplinary and Control and Appeal) Regulation read thus :

10. Disciplinary Authorities.-- (1) The Board may impose any of the penalties specified in Regulation 9 on any Board employee.

(2) Without prejudice to the provisions of Sub-regulation (1) but subject to the provisions of Sub-regulation (3) :--

(a) any of the penalties specified in Regulation 9 may be imposed on a Board employee by the Appointing Authority or the authorities specified in the schedules in this behalf, to the extent indicated thereon;

(b) without prejudice to Sub-regulation (1) and subject to Sub-regulation (3) where a Board employee who is a member of any class or grade of the Board (hereinafter, this sub-regulation is referred to as the 'parent service') is deputed for service of any class or grade of another State Service (hereinafter in this sub-regulation referred to as the Deputed Service) the authority which appointed him in the class or grade of the deputed service shall have the powers of Appointing Authority for placing him under suspension and the Disciplinary Authority for the purpose of taking disciplinary proceedings against him:

Provided that the authority which appointed him in the deputed service shall, as soon as possible inform the Appointing Authority in the parent service the circumstances leading to the order of his suspension or the commencement of the disciplinary proceedings as the case may be. (3) Notwithstanding anything contained in this regulation, no penalty is prescribed in Clauses (v) to (viii) of Regulation 9 shall be imposed by any authority lower than the Appointing Authority.

5. In Schedule VI, the authority empowered to impose both the major and minor penalties envisaged under Regulation 9 is shown to be Zonal Chief Engineer (Electrical General). In the cases where the Lokayukta or Upa-Lokayukta conducts enquiry on the reference from the Board or any other authority or suo motu Regulation 14A provides the special procedure for imposition of penalties. For convenient reference provisions of Regulation 14A extracted here under:

14A. Special Procedure in certain cases: (1) The following provisions shall, notwithstanding anything contained in Regulations 10 to 11-A and 13 be applicable for purposes of proceeding against Board employees whose alleged misconduct has been investigated into by the Vigilance

Commission/Lokayukta/Upa-lokayukta either suo motu or on a reference from the Board or from any other authority, viz.--

(a) where investigation into any allegation against--

(1) a member of Board services Group A, B, C or D in respect of an allegation of a serious nature, the Vigilance Commissioner/Lokayukta/Upa-Lokayukta or any Officer of the Vigilance Commission/Lokayukta/Upa-Lokayukta Authorised by him in writing under Sub-rule (2) of Rule 5 of Karnataka State Vigilance Commission's Rules, 1980/Rule 12 of the Karnataka Lokayukta/Upa-Lokayukta Act, 1984 is of the opinion that disciplinary proceedings shall be taken, he shall forward the record of investigation along with his recommendations to the Board, and the Board after examining such records may either direct an inquiry into the case by the Vigilance Commission/Lokayukta/Upa-Lokayukta or direct the Appropriate Disciplinary Authority to take action in accordance with Regulation 12. (b) Where the Vigilance Commission/Lokayukta/Upa-Lokayukta is directed to hold an inquiry into a case under Clause (a) the Inquiry may be conducted either by the Vigilance Commissioner/Lokayukta/Upa-Lokayukta authorised by the Vigilance Commissioner/Lokayukta/Upa-Lokayukta to conduct the Inquiry,:

Provided that the inquiry of a case relating to the Board employee shall not be conducted by an Officer lower in rank than that of such Board employee; (c) The Vigilance Commissioner/Lokayukta/Upa-Lokayukta or the Officer Authorised to conduct the inquiry under Clause (b) shall conduct the inquiry in accordance with the provisions of sub-regulations (2) to (20) and Sub-regulation (23) of Regulation 11 and for the purposes of conducting such inquiry, shall have the power of the Disciplinary Authority referred to in the said Regulation;

(d) After the inquiry is completed, the records of the case with the findings of the Inquiring Officer and the recommendations of the Vigilance Commissioner/Likayukta/Upa-Lokayukta shall be sent to the Board.

(e) On receipt of the records under Clause (d), the Board shall take action in accordance with the provisions of Sub-regulation (21) and Sub-regulation (23) of Regulation 11 and Regulation 11-A and in all such cases, the Board shall be

competent to impose any of the penalties specified in Regulation 9.

6. It is the contention of the petitioner that under Regulation 14A in respect of investigations conducted by the Lokayukta, the Board is the competent authority and relied on unreported ruling of this Court in Criminal Appeal No. 821 of 1996. The said ruling was also cited before the trial Court. In this petition, along with the impugned order at Annexure A, the petitioner has filed the sanction order.

7. The facts narrated in the sanction order reveal that on 8-9-1994 the complainant Abbasaheb Surendra Hulamani, resident of Belgaum appeared before the Deputy Superintendent of Police, Lokayukta, Belgaum and to the effect that H. Nagaraj, Assistant Engineer (Electrical) o/o the Executive Engineer, Electrical, KEB., Belgaum demanded an illegal gratification of Rs. 3,000/- (sic) and hence he has requested legal action against the said Assistant Engineer, Electrical. On the complaint, a criminal case was registered on the same day against H. Nagaraj in Crime No. 12/94 under Sections 7 and 13(1)(d) read with Section 13(2) of [Prevention of Corruption Act, 1988](#) and took up further investigation and after following all the pre-trap formalities, a trap was laid by the staff of BOI, Karnataka Lokayukta, Belgaum, and accused was caught red handed. The further investigation was conducted and on completion of the investigation, with all the records and the investigation material connected with the investigation had been submitted to the Chief Engineer, Electrical, General for according sanction. After consideration of the material, the sanction has been granted.

8. From the facts narrated above it clearly suggest that the facts of the case does not suggest that provisions of Regulation 14A would be applicable. On the other hand, the provisions of Regulation 10 would be applicable and the named hierarchy of the disciplinary authorities under Regulation 10 would be competent to accord sanction.

The provisions of Regulation 14A clearly indicate that only in respect of investigation conducted by Lokayukta/Upa-Lokayukta suo motu or on the reference from the Board or any other authority though Lokayukta/Upa-Lokayukta investigating into the complaint of misconduct against any of the officials involving all the categories and on completion of such enquiry would submit a report to the

Board along with the recommendations has to act upon a report and the recommendations and would impose penalty on such delinquent official. The prefatory wordings of Regulation 14A indicate that it is a special procedure envisaged in respect of investigation conducted by Lokayukta/Upa-Lokayukta under Regulation 14A and in respect of such investigation conducted under Regulation 14A, the normal procedures envisaged under Regulations 10 to 11A and 13 are not made applicable.

The investigations conducted by the Lokayukta Police are totally a different proceedings not connected with investigation conducted by Lokayukta/Upa-Lokayukta as envisaged under Regulation 14A. In exercise of powers under Section 2 of Cr. P.C. the Notification is issued by the Government of Karnataka No. HD 175 PEG 86(1) dated 26-5-1986 declares the officers of the Lokayukta Police of the rank of Special Inspector General of Police, Deputy Inspector General of Police, Superintendent of Police, Deputy Superintendent of Police and Inspectors constituted in division wise and districtwise and also in some divisional head quarters as the Police stations defining the jurisdictional area of their operation. The investigations conducted under the P.C.R. Act by the Lokayukta Police under Section 17 constitute a distinct and a different investigation not related with the enquiries or investigations conducted by Lokayukta/Upa-Lokayukta under Regulation 14A. The-enquiries or the investigations conducted by Lokayukta/Upa-Lokayukta are only in the nature of administrative enquiries and not a police investigation. Pursuant to such enquiry, however, the Lokayukta/Upa-Lokayukta may recommend for criminal prosecution. However in respect of offences committed under P.C.R. Act, the Lokayukta Police have independent original jurisdiction to conduct investigations and to lay final report before the competent Court for prosecution after obtaining necessary sanction as envisaged under the P.C.R. Act.

The facts of the case clearly indicate that there was no reference by the Board to the Lokayukta/Upa-Lokayukta and no investigation is conducted by Lokayukta/Upa-Lokayukta as contemplated under Regulation 14A. Therefore for launching prosecution, the competent sanctioning authority would be the authority named under Regulations 9 and 10 and not the Board as envisaged under

Regulation 14A.

The decision of this Court in Jaffar Khan v. State by Police Inspector, Bureau of Investigation, Karnataka Lokayukta is cited. At page 24, the relevant observations are extracted hereunder :

Apart from this aspect, as rightly pointed out by the learned Counsel for the appellant, Regulation 14A, Sub-clause (e) of the Karnataka Electricity Board Employees Classification, Disciplinary Control and Appeal Regulations, 1987 clearly specifies that the Board would be the competent authority to impose a penalty on the delinquent employees, whose alleged misconduct has been investigated into by the Lokayukta. Since the Board is the removing authority in case of misconduct, in my view, the Board alone is the competent authority to issue the sanction order. But, in the present case, the sanction order, Ex. P-5 has not been issued by the Board under the signature of its Members to prosecute the accused.

After carefully going through the facts and observations made in the said case respectfully I am unable to agree with the view since the observations are made without reasons and reference to the provisions of law referred to above. This Court in Panchasari Shidramappa Yeligar v. Siggaon Taluk Shikshana Samithi, : ILR 1998 KAR3748 ; has laid down thus :

12.1. While some of the exceptions to the rule of stare decisis can be applied to all decisions which can be called as precedents, some, like the exception based on per in curiam Rule can be applied only in regard to decisions of Co-ordinate Branches of the same Court, and not to decisions of larger Benches of the same Court or the Apex Court. While a decision rendered per incuriam by a Co-ordinate Bench may not be binding as a precedent, a Court in a lower tier (Smaller Bench) cannot refuse to follow the ratio decidendi of a decision rendered by the Court in a higher tier (larger Bench of the same Court or the Apex Court) by stating that such decision is rendered per incuriam.

With great respect, I disagree with the view taken by Mr. K. Prasada Rao, J., in Criminal Appeal No. 821/96 as per incuriam.

In view of the facts and law discussed above, I do not find any merit in the contention that the sanction order granted by the Chief Engineer (Electrical General) is bad in law and that accused is entitled to be discharged on that account. Although the order of the Special Judge in rejecting the request for discharge is to be affirmed, however I find the Special Judge has committed grave judicial impropriety amounting to contempt in not following the ratio in Crl. A. 826/96. Although he specifically refers to said decision in para 8 however makes out patently illusory and artificial reasons in the following words for not following the ratio.

It is also held therein that the sanction order has not been issued by the Board under signature of its Members to prosecute the accused. Thus, in the case cited above, holding that there is no valid sanction to prosecute the accused and, prior to that, holding that the case against the accused is not proved beyond reasonable doubt about the demanding and accepting illegal gratification to do an official favour, the accused therein has been acquitted. But, in the instant case, the case is still at the threshold of commencement of trial and after framing charge the accused has moved this Court praying for discharge. In the case on hand, it is yet to be made out whether the accused is guilty of the offence alleged and it is to be examined whether there is valid sanction or not.

The entire reading of the reasons given by the Special Judge in para 8 is totally unconvincing and cannot justify his conduct of overlooking the ratio of this Court in Crl. P. 821.96.

A copy of this order and the copy of the order passed by the Special Judge in Spl. Case No. 43/95 be placed in the Confidential Report for consideration by the Administrative Judge.

Therefore, for the reasons and discussions made above, the petition is dismissed.