

(2013) 09 KAR CK 0359
In the Karnataka High Court
Case No : Writ Petition No. 7246-7250 of 2013

Ideya Vendan R. and Others

APPELLANT

Vs

The Additional Chief Secretary and Others

RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(2), 173(2), 197, 2(s), 482
Karnataka Police Act, 1963 — Section 113, 114, 54, 55, 56
Penal Code, 1860 (IPC) — Section 420, 455, 472, 477A

Citation : (2013) 09 KAR CK 0359

Hon'ble Judges : K.N. Keshavanarayana, J

Bench : Single Bench

Advocate : Ravi. B. Naik, for M/s. Diwakara and Associates, in W.P. Nos. 46233-46239/12, 2151-2154, 6587, 7246-7250, 7251-7254, 7255-7259, 7260-7262, 7263-7265, 7266-7269, 7270-7273, 7274-7276, 7277-7279, 7280-7282, 7283-7285, 7286-7288, 7289-7291, 7292-7294, 7295-7298, 7299-7302, 7303-7306, 7307-7309, 23296-23298, 24596-24601, 11196-11198, 21542, 21199-21200, 21201-21206, 21207-21208, 26066-26080/2013, Sri. B.B. Bajentri in W.P. No. 23336/13, Sri. Shanthi Bhushan. H. in W.P. Nos. 3715-3718, 6199-6203/13 and in Criminal P. No. 555/13, Sri. C. R. Gopalaswamy in W.P. Nos. 26173-26176, 26744-26747/13 and Sri. S. Kalyan Basavaraj, ASG in W.P. Nos. 22265/13, for the Appellant; Ravi Varma Kumar, AG, Sri. Vijay Kumar Majage, GP in W.P. Nos. 46233-46239/12, 2151-2154, 3715-3718, 6199-6203, 6587, 7246-7250, 7251-7254, 7255-7259, 7260-7262, 7263-7265, 7266-7269, 7270-7273, 7274-7276, 7277-7279, 7280-7282, 7283-7285, 7286-7288, 7289-7291, 7292-7294, 7295-7298, 7299-7302, 7303-7306, 7307-7309, 23296-23298, 23336, 24596-24601, 11196-11198, 21542, 26066-26080, 26173-26176, 26744-26747/2013 and CrI. P. No. 555/13 and for R-1 to R-3 and R-6 to R-7 in W.P. No. 21199-200, 21207-208, 21201-206/13, Sri. Sandeep Patil, Advocate for R-4 and R-5 in W.P. Nos. 21199-21200, 21201-21206, 21207-21208/13, Sri. K.N. Puttegowda, Advocate for R-4 to R-6 and Sri. Ravi Varma Kumar, AG for Sri. Vijay Kumar Majage, GP for R-1 to R-3 and R-7 in W.P. No. 22265/13, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Keshavanarayana, J.—In this batch of writ petitions filed under Articles 226 and 227 of the Constitution of India r/w. Section 482 of Cr.P.C., the respective petitioners have sought for quashing the FIR registered by Bangalore Metropolitan Task Force ("BMTF" for short) in Crime No. 4/2011 registered for the offences punishable under Sections 420, 406, 409, 465, 468, 471, 477A r/w. 120B of IPC and Section 23 of the Karnataka Transparency in Public Procurement Act 1999 (for short, "KTPP Act") and the charge sheets filed thereon for the offences punishable under Sections 120B, 465, 468, 471, 477A, 409 r/w. 34 & 37 of IPC. As common questions of fact and law arises for consideration in this batch of writ petitions, they were heard together and are being disposed of by this common order.

2. Some of the petitions are by the employees of Bruhat Bangalore Mahanagara Palike (for short "BBMP") as Engineers in various Engineering Divisions of BBMP. The Contractors, who were entrusted with the work, in respect of which the crime case was registered, are also before this court in some of the petitions questioning the legality and validity of the registration of the case and launching of prosecutions. The petitions filed by different category of persons are as under:-

A) In the following petitions, the respective petitioners who are the Engineers of the BBMP, have sought for quashing the FIR registered in Crime No. 4/2011 by BMTF Police and the investigation thereon by the CID Police.

B) In the following petitions, the petitioners who are Engineers of BBMP have sought for quashing the prosecutions launched against them on the basis of the charge sheets filed by CID Police.

C) In the following petitions, the respective petitioners who are Engineers and Civil Contractors, have sought for quashing the FIR in Crime No. 4/2011 registered by BMTF police and the investigation therein, and charge sheets filed by CID.

D) In the following petitions, the respective petitioners who are Civil Contractors, have sought for quashing of investigation in Crime No. 4/2011 by BMTF Police/ CID.

3. The facts leading to presentation of these petitions are as under:-

In respect of various civil works in the Engineering Department pertaining to Malleshwaram, Gandhinagar and Rajarajeshwari Nagar Divisions of BBMP during the period 2008-09 to 2011-12, there were complaints about large scale illegalities, irregularities, defalcation of funds on the basis of fabricated documents and manipulation of tender process to award work to few chosen contractors, etc. committed by the engineering staff as also the private contractors, running to several hundred of crores of rupees. The Commissioner of BBMP vide his order dated 10.12.2011 directed the Technical Vigilance Cell (for short, "TVCC") of the BBMP to look into those complaints and submit a report after verifying the records. In the meanwhile, an article in this regard was

published in a Kannada Daily on 20.10.2011 under the caption "500 . In response to this newspaper report, the Additional Chief Secretary, Urban Development Department, Government of Karnataka, by his letter dated 20.10.2011 directed the BBMP to submit a detailed report in that regard. The TVCC conducted some preliminary enquiry, visited the office of the aforesaid Divisions, verified few records which were made available, and prima facie found that there has been large scale irregularity, fabrication of documents, defalcation of funds, etc. in relation to various works undertaken during the aforesaid period. A report to this effect was submitted by TVCC. The said report indicated that in respect of some of the works, the documents have been fabricated and concocted, based on which excess claims have been made and those claims have been recommended for clearance by the concerned Engineering Staff. In respect of some works, tender process undertaken were in violation of KTPP Act and also the PWD Code by entrusting the works to very few known contractors. In respect of some works, bills have been passed even though no work was undertaken. In the light of the said report, the Additional Commissioner (Admn.), BBMP, lodged a report dated 03.11.2011 with the Superintendent of Police, BMTF, requesting for registration of criminal case and to investigate the matter. The Superintendent of Police, BMTF, forwarded the said report to the Police Inspector of BMTF for registration of the case, based on which, the case in Crime No. 4/2011 for the offences noticed supra came to be registered on 04.11.2011 and investigation was taken-up against the unknown persons stating that the accused are to be "ascertained and identified", and the FIR was submitted to the jurisdictional Court namely, IV-Additional C.M.M., Bangalore. When the investigation in Crime No. 4/2011 of BMTF Police was pending, the Government by Order dated 28.11.2011 transferred the investigation in Crime No. 4/2011 from BMTF to CID. However, by Government Order dated 07.12.2011, the Government withdrew the Government Order dated 28.11.2011, and in modification, the investigation by CID was restricted only to the extent of illegality and irregularity in respect of the work of asphaltting the roads. However, by corrigendum order dated 01.02.2012, the Government modified the Government Order dated 07.12.2011 and directed the investigation into all the allegations made in the FIR registered in Crime No. 4/2011 of BMTF Police Station to CID. Consequently, the CID took-up investigation and in respect of certain works, on completion of investigation, CID filed several charge sheets against the officials of the Engineering Department and also the contractors. In respect of other works, the investigation is still going-on. Wherever, the CID has filed charge sheet, the persons arraigned as accused therein have sought for quashing the charge sheet and the prosecutions launched against them. In some of the petitions, the FIR registered by BMTF Police and the investigation by CID are sought to be quashed.

4. The common grounds on which registration of the FIR as well as launching of the prosecutions have been sought to be quashed are that, the BMTF had no jurisdiction to register the case for various offences mentioned therein

punishable under Indian Penal Code and KTPP Act, since the BMTF has been constituted for specific purpose of detection and prevention of unauthorized and illegal occupation of properties belonging to the Government, BBMP and other public authorities enumerated in the notification, under which the BMTF was constituted and since the BMTF is not empowered to investigate into the offences under the Indian Penal Code as also KTPP Act, registration of the case by BMTF is without jurisdiction and authority of law; that the transfer of investigation to CID is colorable exercise of the power by the Government; that the submission of charge sheets to the jurisdictional Court by CID is without authority since the Government while transferring investigation to CID, had directed the CID to submit report to the Government, therefore, the CID could not have filed final report u/s 173(2) of Cr.P.C. to the jurisdictional Magistrate and thus, the CID has over-stepped its jurisdiction; that the tenor of the Government Order, by which the investigation was entrusted to CID, indicates that the Government wanted the CID to enquire into the matter and submit a report to it, so that the Government could take necessary decision on the matter, therefore, the final report filed by CID in the form of charge sheet before the learned Magistrate was without jurisdiction; that the learned Magistrate without applying his judicious mind, has mechanically taken cognizance of the offences alleged, as such, the order passed by the learned Magistrate taking cognizance is perverse and illegal; that since the acts alleged to have been committed by the Staff of the Engineering Section have been committed during the discharge of their official duties, sanction u/s 197 of Cr.P.C. is a pre-requisite condition, as such, the order passed by the jurisdictional Magistrate taking cognizance, though no sanction to prosecute the public servants has been produced, is bad in law.

5. A detailed statement of objections has been filed on behalf of Respondent Nos. 2 & 3 namely, the Director General of Police and the Deputy Superintendent of Police, CID, Bangalore. In the statement of objections it is contended that the petitioners are not entitled for any of the reliefs sought in the petitions, as such, the petitions are liable to be dismissed in limine. It is further contended that Respondent No. 4-BMTF has power to register case and investigate into any offence, as, it has been declared as a Police Station u/s 2(s) of Cr.P.C. under Notification dated 02.09.2002, as such, it is a general police station, therefore BMTF police had jurisdiction to register the case in Crime No. 4/2011 for various offences mentioned therein since the report lodged disclosed commission of cognizable offences. It is further contended that, in view of Section 156(2) of Cr.P.C., no proceedings by a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. It is further contended that the Government in exercise of its power ordered transfer of the investigation in Crime No. 4/2011 to the CID, as such, CID has power to investigate into the matter and on completion of investigation, CID is under a statutory obligation to file a final report u/s 173(2) of Cr.P.C. to the jurisdictional Court and not to the Government, as sought to be contended by the petitioners, and the direction in

the Government Notification that "CID to submit report to the Government" is only relate to the compliance report on the status of the investigation and therefore, the charge sheets filed by CID are in accordance with law and since the evidence collected during investigation and produced along with the charge sheets filed before the Court are prima facie sufficient to proceed against the persons named as accused therein, the learned Magistrate is justified in taking cognizance of the offences and issuing summons. It is further contended that the acts alleged against the petitioners constituting aforesaid offences have been committed beyond the purview of their official duties and by no stretch of imagination, the acts complained against the petitioners can be termed as the one done or purported to have been done in discharge of their official duties, as such, the sanction as provided u/s 197 of Cr.P.C. is not required, therefore, there was no bar for the jurisdictional Magistrate to take cognizance. It is further contended that there has been no jurisdictional irregularity committed either by the Investigating Agency in registering the case and proceeding with the investigation or by the learned Magistrate in taking cognizance of the offences, therefore, the petitions lack merit, as such, they are liable to be dismissed.

6. I have heard Sri. Ravi B. Naik, learned Senior Counsel for M/s. Diwakar & Associates, Sri. K. Diwakara, Sri. C.R. Gopalaswamy, Sri. Shanthi Bhushan H., Sri. Kalyan Basavaraj, B.B. Bajentri, Advocates appearing for the petitioners and Sri. Ravivarma Kumar, learned Advocate General for Sri. Vijay Kumar Majage, HCGP, appearing for the Respondent-State and Sri. Sandeep Patil, and Sri. K.N. Puttegowda, Advocates for the Respondent-BBMP.

7. Learned Senior Counsel and other counsels appearing for the petitioners put-forth the following contentions.

8. As could be seen from the Government Order dated 19.03.1996 under which BMTF was constituted, it is clear that BMTF was constituted as a field unit under the Urban Development Department, Government of Karnataka, for the prevention, detection and investigation of offences and prosecutions in respect of the property belonging to the Government and other organizations and for the purpose of detection of commission or any design for committing any offence as well as investigation and prosecution of such offence relating to unauthorized occupation of any land which is an offence under the Karnataka Municipal Corporation Act, 1978, Bangalore Development Authority Act, 1976, Karnataka Municipality Act, 1964, Bangalore Water Supply and Sewerage Act, 1964 and Karnataka Slum Area (Improvement and Clearance) Act, 1973 only, as such, the BMTF was not constituted as a police station in terms of Section 2(s) of Cr.P.C., therefore, BMTF had no jurisdiction to register and investigate the case which does not relate to unauthorized occupation of any land belonging to the aforesaid authorities and which is not an offence under any of the enactments stated in the notification. Therefore, the very registration of the case by BMTF was without jurisdiction and authority of law; that though by notification dated 27.05.1996, the BMTF was authorized to investigate into some of the offences punishable

under Indian Penal Code, those offences could not have investigated by BMTF independently unless the acts complained constitutes offence under any of the enactments mentioned in the earlier notification. In this behalf, reliance was placed on the decision of this Court in Dr. S.M. Kalligudd and Others Vs. State of Karnataka and Others, ; that since in the case on hand, the acts alleged in the FIR did not constitute offence under any of the aforesaid enactments, BMTF had no jurisdiction to register the case for the offences punishable under Indian Penal Code; that in view of the fact that offence under KTPP Act is not the one enumerated in the notification constituting BMTF, BMTF had no jurisdiction to register the case for any of the offence under KTPP Act, as such, registration of the case by BMTF was without jurisdiction; that though by subsequent notification, BMTF has been declared as Police Station in terms of Section 2(s) of Cr.P.C., having regard to the object and purpose for which BMTF was constituted, it cannot be construed as a Police Station in general terms, but it is a police station for a specific purpose having limited jurisdiction; that this position has been made amply clear in the latest Government Order dated 02.02.2013 followed by Government Notification dated 06.02.2013; that in view of the fact that initial registration of the case by BMTF itself was without jurisdiction, transfer of investigation to CID would not validate the registration of the case, as such, CID had no jurisdiction to investigate into the matter; that tenor of the Government Orders, under which the investigation was transferred to CID, indicates that the Government intend to have only an enquiry and to secure report as to the various allegations for the purpose of taking further action in the matter and the Government never intended CID to file a charge sheet against any officials or non-officials, therefore, the charge sheets filed by CID are without jurisdiction and authority of law; that assuming for the purpose of argument that CID had jurisdiction to investigate and file a final report into the court, in view of the fact that only one crime case had been registered, one final report ought to have been filed, whereas, CID has filed multiple charge sheets, therefore the multiple charge sheets filed are without jurisdiction; that as could be seen from the allegations made in the charge sheets, it is clear that the alleged offences have been committed by the public servants in discharge of their official duties, as such, sanction u/s 197 of Cr.P.C. is a condition precedent for the court to take cognizance and since no such sanction has been accorded by the competent authority, the learned Magistrate had no jurisdiction to take cognizance and therefore, the order taking cognizance is without jurisdiction.

9. Countering the above arguments, learned Advocate General contended as under:-

Though initially BMTF was constituted as a "Field Unit" for the purpose of detection and prevention of unauthorized occupation of any property belonging to the Government or other authorities enumerated in the notification dated 19.03.1996 and was empowered to investigate and launch prosecution in respect of any commission or design for committing any offences under the enactments specified therein, subsequently the Government declared the as a "Police

Station" in terms of Section 2(s) of Cr.P.C. and was also authorized to investigate the offences and launch prosecution for the offences punishable under Indian Penal Code, therefore, BMTF had jurisdiction and authority to register the case in Crime No. 4/2011 on the basis of the report lodged by the Additional Commissioner of BBMP, as such, there is no illegality or irregularity in registering the aforesaid case; that Government in exercise of its power of superintendence on the Police Force in the State has the power to transfer the investigation to a Specialized Agency and in exercise of such power, the Government ordered transfer of investigation in Crime No. 4/2011 registered by BMTF to CID. Therefore, there is no illegality or irregularity in Government ordering transfer of the investigation to CID. The decision of this Court in Dr. S.M. Kalligudd's case referred to supra is not applicable to the cases on hand in the light of the subsequent notifications declaring BMTF as a "Police Station" u/s 2(s) of Cr.P.C. and also empowering BMTF to investigate and launch prosecutions in respect of the offences punishable under Indian Penal Code. In this regard, reliance was placed on the decision of this Court in the case of Narasimhaiah Vs. State and Another, . There is absolutely no circumstance brought-out on record by any of the petitioners to indicate that the order transferring the investigation to CID is a colorable exercise of the power by the Government; that once the investigation was entrusted to CID it has all powers of investigation and forming an opinion, based on which it has the power to submit a report u/s 173(2) of Cr.P.C. to the jurisdictional court and the direction contained in the Government Order to CID to submit their report to the Government is only the status report and not a final report as contemplated u/s 13(2) of Cr.P.C. In this regard, reliance was placed on the decision of the Apex Court in the case of Ashok Kumar Todi Vs. Kishwar Jahan and Others, ; that the clarificatory notification dated 02.02.2013 issued by the Government and the observations made by the Division Bench in its order dated 23.07.2013 passed in the Public Interest Litigation filed in Writ Petition Nos. 12381-12382/2013 have no application to the case on hand, since much prior to the notification dated 02.02.2013, the case in Crime No. 4/2011 had been registered and investigation had been transferred to CID. In view of the fact that in the report lodged by Additional Commissioner, based on which the case in Crime No. 4/2011 was registered, no specific overt acts had been attributed against any persons and the complaint was general in nature, the Investigating Officer is competent to file multiple charge sheets in respect of various omissions and commissions committed by different persons during different periods. Therefore, filing of multiple charge sheets in respect of one crime case registered is justified and no fault can be found with the said procedure adopted by the Investigating Officer. Requirement of sanction u/s 197 of Cr.P.C. would arise only where public servant is accused of committing any offences while acting or purporting to act in discharge of his official duties, whereas having regard to the nature of the acts alleged to have been committed by public servants involved in this batch of petitions, it cannot be said that those acts have been done while acting or purporting to act in discharge of their official duties. Therefore, sanction u/s 197 of Cr.P.C. is not required, as such, the

learned Magistrate is justified in taking cognizance of the offences alleged in various charge sheets filed. In this regard, reliance was placed on the following decisions.

- i) P. Govinda Bhat Vs. State of Karnataka,
- ii) State of H.P. Vs. M.P. Gupta,
- iii) State of Kerala Vs. V. Padmnabhan Nair,
- iv) Shambhoo Nath Misra Vs. State of U.P. and others,
- v) Bakhshish Singh Brar Vs. Gurmej Kaur and Another,
- vi) Raghunath Anant Govilkar Vs. State of Maharashtra and Others,

The allegations made in the charge sheets filed as also the evidence produced therewith prima facie indicates the offences alleged therein against the respective accused persons and therefore, the learned Magistrate is justified in taking cognizance of the offences alleged and directing issue of summons to the accused persons. Relying on the order passed by another Single Bench of this Court in Writ Petition Nos. 1156-1160/2012 dated 01.08.2013, it was contended that some of the petitioners in this batch of writ petitions were petitioners in Writ Petition Nos. 1156-1160/2012, wherein they had challenged the registration of cases by BMTF in Crime No. 4/2011 and those writ petitions have been dismissed, as such, it is not upon to those petitioners to re-agitate the said issue. Therefore, the learned Advocate General sought dismissal of the petitions.

10. In the facts and circumstances of the case and in the light of the submissions made on both sides, the points that arise for consideration are,-

- i) Whether BMTF had jurisdiction and authority to register the case for the offences alleged in Crime No. 4/2011 and to investigate the same;
- ii) Whether transfer of the investigation in Crime No. 4/2011 from BMTF to CID by the Government was competent.
- iii) Having regard to the facts and circumstances of the case and the nature of accusations made in various charge sheets filed by CID against the public servants, whether the bar created u/s 197 of Cr.P.C. is attracted, if so, whether the learned Magistrate is justified in taking cognizance of the offences alleged and ordering issue of summons against the public servants involved in those cases.

Regarding Point No. 1:

11. Before proceeding to consider this point, it is necessary to find-out the purpose and object of constituting BMTF.

During mid 1995, need for creating a security force in BCC appears to have been felt and therefore, the Commissioner of BCC submitted a proposal to the

Government on 30.10.1995 for creation of Corporation Security Force comprised of Senior Police Officers from the Police Department on Deputation and the Revenue Officers working in BCC. After considering the said proposal, the Government by its order dated 31.10.1995, accorded sanction to constitute a Corporation Security Force u/s 492 of KMC Act temporarily for a period of one year from the date of the said order consisting of various posts enumerated therein. However, in the early part of 1996 in the wake of the Karnataka Municipal Corporations and Certain Other Lands (Amendment) Act, 1984, which amended KMC Act, BDA Act, KSC Act etc., prohibiting unauthorized occupation of lands belonging to the authorities and making such unauthorized occupation punishable with imprisonment for a term which may extend to three years and also fine which may extend to Rs. 5,000/- and since there were reports of large scale attempts by land grabbers to unauthorisedly occupy the lands belonging to Government and local authorities, the Government decided to establish a Task Force for prevention, detection and investigation of offences and to launch prosecution against the persons relating to unauthorized occupation of the public properties within Bangalore Metropolitan Area. Accordingly, by Government Order No. HD.247.MNU.95 dated 19.03.1996, sanction was accorded to constitute a Force to be called Bangalore Metropolitan Task Force (BMTF) and the Deputy Inspector General of Police was ordered to head the Task Force. The notification also set-out the powers and functions of the Task Force. It is proper to extract the very Government Order issued in this behalf, which reads as under:-

PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA

Sub: Creation of Bangalore Metropolitan Task Force

PREAMBLE:

It has come to the notice of the Government that large scale attempts are made by land-grabbers to occupy unauthorisedly the lands belonging to the Government, the Bangalore City Corporation, the Bangalore Development Authority, the Municipal Councils and the Slum Clearance Board in Bangalore Metropolitan area.

The Karnataka Municipal Corporations and certain other laws (Amendment) Act, 1984 amended the Karnataka Municipal Corporation Act, 1976, Karnataka Municipalities Act, Bangalore Development Authority Act, Karnataka Slum Clearance Act Prohibiting unauthorized occupation of lands belonging to the Corporations, the Bangalore Development Authority, the Municipal Council and the unauthorized occupations were made punishable with imprisonment for term which may extend to three years and a fine which may extent to five thousand rupees.

In order to enforce these provisions effectively it has been decided to establish a task force for prevention, detection and investigation of offences and prosecution, detection in unauthorized occupation in Bangalore Metropolitan

Area. It is proposed to post of the police officers from the police Department on deputation and declares the force as a police station to enable than to register and investigate the cases.

Hence the order.

ORDER No. HD 247 MNU 95 BANGALORE DATED 19 MARCH 1996.

Sanction is accorded to constitute a force to be called the Bangalore Metropolitan Task Force (BMTF)

A Deputy Inspector General of Police shall be the head of the task force with the designation "The Deputy Inspector General of Police, Bangalore Metropolitan Task Force". The command, supervision and administration shall vest in the Deputy Inspector General of Police, Task Force.

The functions of the task force shall be as follows, namely:

Better protection of the property belonging to the Government, the Bangalore City Corporation, the Bangalore Development Authority, the Bangalore Water Supply and Sewerage Board, the City Municipal Council the Slum Clearance Board in Bangalore.

The Detection of commission of any design of committing any offence, of investigation and prosecution of such offence relating to unauthorized occupation of any land which is an offence under the following enactment.

The Karnataka Municipal Corporation Act, 1976.

The Bangalore Development Authority Act, 1976.

The Karnataka Municipality Act, 1964. The Bangalore Water Supply and Sewerage Act, 1964. The Karnataka Slum Areas (Improvement, and Clearance) Act, 1973.

The Bangalore Metropolitan Task Force shall consist of the officers mentioned in Annexure-1.

Every person employed in the Bangalore City Corporation, the Bangalore Development Authority or any other local authority within the Bangalore Metropolitan Area shall forthwith communicate to the task force any information which he may possess respecting commission or attempt to commit any offence by any person under the Karnataka Municipal Corporation Act, 1976. The Bangalore Development Authority Act, 1976, the Karnataka Municipalities Act, 1964 and Karnataka Slum Areas (Improvement and Clearance) Act, 1973.

The task force shall be provided with the assistance of around reserve police by the K.S.R.F. during the critical periods of operation whenever required.

The Metropolitan Task Force will be a field unit of the Urban Development Department of Government of Karnataka and work under the over all supervision

and control of the Secretary, Urban Development.

The Deputy Inspector General shall furnish periodical statements and progress reports to Government. He shall also send a copy of the reports to the Commissioner, Bangalore City Corporation, Commissioner, Bangalore Development Authority, Deputy Commissioner, Bangalore Urban District, Secretary Karnataka Slum Clearance Board, Chairman, Bangalore Water Supply and Sewerage Board and Commissioners of the City Municipal Councils, as the case may be.

The expenditure on the Metropolitan Task Force shall be shared between Government and the organizations mentioned above in proportion to be specified by the Government. The initial expenditure however will be met by Government and debited to Head of Account 2251-Secretariat Social Service-01-Karnataka Government Secretariat and subsequently got reimbursed for the concerned organizations.

Thus, as could be seen from the aforesaid notification, BMTF was constituted as a "Field Unit" of the Urban Development Department, Government of Karnataka.

12. As could be seen from the functions of the Task Force, the said Force was constituted for the purpose of better protection of the property belonging to the Government and other local authorities and in that regard, it was empowered to detect commission or any design for committing of any offence and in that regard undertake investigation into unauthorized occupation of public property belonging to Government or to any other authorities enumerated therein, which constitutes an offence under the enactments referred to therein and to launch prosecution against any such persons in respect of such offences. Thus, from the aforesaid notification, it is clear that BMTF was constituted as a Force for a specific purpose and to function in a specific area. In other words, it was not competent to register any case or investigate into any offences under any other law except the offences relating to unauthorized occupation of the land belonging to the Government or other authorities enumerated in the notification.

13. In the light of the notification dated 19.03.1996 constituting BMTF, the Corporation Security Force constituted under Government Order dated 31.10.1995 was withdrawn by Government Order dated 22.03.1996. After the constitution of BMTF, the Deputy Inspector General of Police, who was the head of the Force, for smooth and proper enforcement of the provisions of various enactments enumerated in the notification dated 19.03.1996 proposed for additional powers. Accordingly, the Government by notification dated 15.04.1996 extended the powers of the Deputy Inspector General of Police, BMTF further, as mentioned in the said notification, which reads as under:-

PROCEEDING OF THE GOVERNMENT OF KARNATAKA

Sub: Creation of Bangalore Metropolitan Task Force.

Read: 1) G.O. No. UDL 247 MNU 95 dated 19.03.1996

Government letter No. HUD 646 MNY 95 dated 21.12.1995.

Preamble:

Bangalore Metropolitan Task Force (BMTF) is constituted under G.O. No. UDD 247 MNU 95 dated 19.03.1996 headed by Deputy Inspector General of Police at Government level to enforce the provisions of the following Acts to safeguard the properties of respective local bodies and Boards:

- a) The Karnataka Municipal Corporation Act, 1976.
- b) The Bangalore Development Authority Act, 1976.
- c) The Karnataka Municipality Act, 1964.
- d) The Bangalore Water Supply and Sewerage Act, 1964.
- e) The Karnataka Slum Areas (Improvement, and Clearance) Act, 1973.

Now, the Deputy Inspector General of Police has proposed following further powers to Bangalore Metropolitan Task Force for smooth and proper enforcement of provisions of above acts in addition to G.O. read at Sl. No. (1) above.

The employees of Bangalore City Corporation, Bangalore Development Authority, The Bangalore Water Supply and Sewerage Board, Karnataka Slum Areas (Improvement & Clearance) Boards and Municipal Councils in Bangalore Metropolitan Area shall give every assistance required by Bangalore Metropolitan Task Force in its work;

The Police Department shall provide all the assistance whenever required by the Task Force in its operations.

The detection of commission or any design or committing any offences of investigation and prosecution of such offences relating to unauthorized occupation of any land which is an offence under the above referred enactments will also include any other offences & irregularities including change of khata.

To identify the employees/officers of the above organization who collude with the public in making them to commit the offences.

Hence this order.

Government Order No. UDD 247 MNU 95, Bangalore Dated 15.04.1996

In continuation of Government Order read at Sl. No. 1(1) above, Government are pleased to extend further powers to Deputy Inspector General of Police, Bangalore Metropolitan Task Force, as indicated in item Nos. 1 to 4 in preamble for smooth and proper functioning of the force.

14. Thus, in addition to the powers conferred under the notification dated 19.03.1996, BMTF was empowered to detect commission of or design of committing any offences, to investigate and launch prosecution for such offences

relating to unauthorized occupation of any land which is an offence under the enactments referred to therein including any other offences and irregularities including change of katha. BMTF was also empowered to identify the employees and/or officers of such organizations who collude with the public in making them to commit the offences. The Government by Notification dated 27.05.1996 declared the office of the Deputy Inspector General of Police, BMTF, as a Police Station in terms of Section 2(s) of Cr.P.C. within BBMP area in respect of the offences specified therein. The said notification reads as under:-

HOME AND TRANSPORT SECRETARIAT NOTIFICATION

No. HD 231 PEG 95, Bangalore Dated 27th May 1996

In exercise of the powers conferred by clause (s) of Section 2 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the Government of Karnataka hereby declares that with effect from the date of publication of this notification in the official gazette, the place specified in column (1) of the Schedule below as police station for the areas specified in the corresponding entry in column (2) thereof, in respect of offence specified thereunder:-

The Bangalore Metropolitan Task Force specified in column (1) of the Schedule shall have the jurisdiction in respect of the offences under the Karnataka Municipal Corporation Act, 1976, the Bangalore Development Authority Act, 1976. The Karnataka Municipalities Act, 1964, The Bangalore Water Supply and Sewerage Act, 1964, The Karnataka Slum Areas (Improvement and Clearance) Act, 1973 and read with Chapter II, Sec. 34 of IPC along with relevant main offence, Chapter V u/s 107 to 120 IPC, Chapter-VI under Sections 120B along with relevant main offence, Chapter-VIII u/s 143, 144, 145, 147, 148, 149, 150, 151 IPC, Chapter-XI under Sections 217 and 218 IPC, Chapter-XVI under Sections 332, 333, 353, IPC(7), Chapter XVII Sections of the Indian Penal Code 1860 and 403, 406, 407, 408, 379, 409, 417, 418, 419, 420, 423, 424, 426, 427, 431, 432, 434, 435, 431, 447, 448, 455, 456 and 457 IPC (8) Chapter XVIII under Sections 456, 466, 467, 468, 471, 472, 473, 474, 475, 476, 477 and 477A IPC, Sections 54, 55, 56, 94, 98, 113 and 114 of Karnataka Police Act, 1963.

15. At that stage a batch of writ petitions came to be filed before this court by one Dr. S.M. Kalligudd and others, who were employees of BCC, questioning the jurisdiction and authority of BMTF in registering cases against them for the offences punishable under Sections 420, 465, 120B and 109 of IPC. Those writ petitions were disposed of by order dated 28.05.1997, reported in (1998) 1 KLJ 252. This court in the said decision after referring to the Notifications dated 19.03.1996 and 27.05.1996 and also after considering the meaning of the word "Post" and also the definition of the "Police Station" contained in Section 2(s) of Cr.P.C. in the context of declaring BMTF as a "Police Station" under notification dated 27.05.1996 held that, as per those notifications, the Officer in charge of the said Police Station (BMTF) can register a case and proceed with the

investigation of case if the facts contained in the FIR disclose offences under the said Special Acts read with or without those under the Indian Penal Code and the Karnataka Police Act. Consequently, it was held that if the FIR discloses commission of the offences only under Indian Penal Code or under the Karnataka Police Act, then it will not be competent on the part of the officer in charge of the police station constituted under notification dated 27.05.1996 to proceed with the investigation thereof Subsequent to the decision of this Court in Dr. S.M. Kalligudd, the Government thought it necessary to entrust some more functions and powers to BMTF for better protection of Government lands including Tanks, Lakes, Tank-beds, etc. in the areas falling within Bangalore District excluding Anekal Revenue Taluk but including Bangalore Metropolitan area. In that regard, the Government issued a notification in partial modification of the earlier notifications dated 19.03.1996 and 15.04.1996, which reads as under:-

ORDER NO. UDD 110 MNU 97, BANGALORE DATED 28th AUGUST 1997

After considering the above aspects, in partial modifications of the Government Order read at (1) and (2) above, Government are pleased to order the following namely:-

The Inspector General of Police shall be the head of the task force with the designation "The Inspector General of Police, Bangalore Metropolitan Task Force". The command, Supervision and Administration shall vest in the Inspector General of Police Task Force.

The functions of the Task Force shall be as follows:

1. Better protection of the property (including lands) belonging to the Bangalore City Corporation, the Bangalore Development Authority, The Bangalore Water Supply and Sewerage Board, the Karnataka Slum Clearance Board, the City Municipal Councils, the Town Municipal Council and to the Government, including tanks, lakes and tank-beds handed over for maintenance to the Forest Department within the Bangalore District excluding Anekal Revenue Taluk but including Bangalore Metropolitan Area.

2. The detection of Commission or any design to commit any offence, the investigation and prosecution of such offences relating to the unauthorised occupation of any land belonging to the Government, the Bangalore City Corporation, the Bangalore Development Authority, The Bangalore Water Supply and Sewerage Board, the Karnataka Slum Clearance Board, the City Municipal Councils, the Town Municipal Council within Bangalore Metropolitan and also other offences and irregularities committed under the following enactments.

a) The Karnataka Municipal Corporation Act, 1976

b) The Bangalore Development Authority Act, 1976

c) The Karnataka Municipalities Act, 1964

d) The Bangalore Water Supply and Sewerage Board Act, 1964

- e) The Karnataka Slum Areas (Improvement and Clearance) Act, 1973.
- f) The Karnataka Land Revenue Act, 1964
- g) The Karnataka SC & ST (Prohibition of Transfer of Certain Lands) Act, 1978
- h) The Karnataka Land Reforms Act, 1961
- i) Inam Abolition Act
- j) The Indian Penal Code k) The Karnataka Police Act, 1963

3. To identify those employees and officers of the above organizations who collude with the public in committing the offence's by creating false and forged documents and which involves loss of revenue and to take action against them as per law.

4. All the employees and officers of the concerned organizations shall furnish all the information regarding the offences and irregularities aforementioned to the Bangalore Metropolitan Task Force and shall provide all assistance and co-operation without delay for the effective performance of its duties.

5. The Police Department shall provide all the necessary and adequate assistance and support including the armed police platoons without any delay whenever requisitioned by the Bangalore Metropolitan Task Force.

6. The Bangalore Metropolitan Task Force will be a field unit of the Urban Development Department of Government of Karnataka and work under the over all supervision and control of the Principal Secretary, Urban Development Department.

7. In respect of revenue lands, tanks, lakes and tank-beds the Inspector General of Police, Bangalore Metropolitan Task Force will directly report to the Principal Secretary, Revenue Department, Government of Karnataka and co-ordinate the operations.

The Inspector General of Police, Bangalore Metropolitan Task Force shall furnish periodical statements and progress reports to the Government. He shall also send copy of the reports to the Commissioners, Bangalore City Corporation, the Bangalore Development Authority, The Commissioner of City Municipal council or Chief Officer of Town Municipal Council, Deputy Commissioner, Bangalore District, Secretary, Karnataka Slum Clearance Board, Chairman, Bangalore Water Supply and Sewerage Board and the Divisional Commissioner, Bangalore Division, as the case may be.

By order and in the Name of the Governor of Karnataka, Sd/-

Under Secretary to Government, Urban Development Department

(Underlining by me).

Thus, as per the notification dated 28.08.1997 extracted supra, a police officer of

the rank of Inspector-General of Police was made as head of BMTF; BMTF was empowered to investigate into the offences relating to unauthorized occupation of the property including lands belonging to the Government and other authorities mentioned therein, as also tanks, lakes and tank-beds handed-over to the Forest Department. BMTF was also authorized to undertake detection of commission of or any design to commit any offence and to investigate as also to launch prosecution for such offences relating to unauthorized occupation of any land belonging to Government and other authorities, and also other offences and illegalities committed under the five enactments enumerated in Notification dated 19.03.1996 and also other enactments, viz., Karnataka Land Revenue Act, Karnataka SC & SC (Prohibition and Transfer of Certain Lands) Act, Karnataka Land Reforms Act, Inam Abolition Act, Indian Penal Code and Karnataka Police Act. The BMTF was also authorized to identify the employees and officers of the Organizations enumerated therein, who collude with the public in committing the offences by creating false and forged documents which involves loss of revenue and also to take action against such employees in accordance with law. Thus, to this extent, the judgment of this court in Dr. S.M. Kalligudd's case was diluted by virtue of subsequent notification dated 23.08.1997. Subsequently, in supersession of earlier notifications, the Government issued notification dated 02.09.2002 declaring the places specified in Column No. 2 of the table annexed to the said notification as police station in terms of Section 2(s) of Cr.P.C. with reference to the local areas mentioned in Column-3 of the table. The said notification reads as under:-

HOME AND TRANSPORT SECRETARIAT NOTIFICATION

No. HD: 181: POP: 2001, Bangalore, Dated 2nd September 2002.

In exercise of the powers conferred by clause (s) of Section 2 of the Code of Criminal Procedure, 1973 (Central Act, 2 of 1974) and in supersession of all the notifications issued in this behalf, the Government of Karnataka, hereby declare the places specified in column (2) of the table below, as Police Station and specify the local areas mentioned in the corresponding entries in column (3) thereof as local areas included within the jurisdiction of those Police Stations.

By order and in the Name of the Governor of Karnataka, Sd/-

Under Secretary to Government, Home and Transport Department (Police Expenditure)

16. Thus, by this notification, in addition to the declaration, declaring the office of the Deputy Inspector General of Police, BMTF as a "Police Station" under notification dated 27.05.1996, the office of the Inspector General of Police, BMTF, Office of the Superintendent of Police, BMTF, office of Deputy Superintendent of Police, BMTF, Office of Inspector of Police, BMTF, were also declared as "Police Stations" and the local areas of all those police stations were specified as areas within jurisdiction of Bangalore Metropolitan Area and Bangalore District, excluding Anekal Revenue Taluk. From this notification it is clear that without any

kind of limitations, different offices of BMTF were declared as "Police Stations," in terms of Section 2(s) of Cr.P.C. Subsequently, the Inspector General of Police, BMTF, requested the Government to amend Order dated 28.08.1997 issued earlier in respect of powers of BMTF. Considering the said proposal, the Government issued notification dated 17.11.2004 substituting Paragraphs-1 & 2 of notification dated 28.08.1997. The said notification reads as under:-

G.O. No. UDD 132 MNU 2004, Bangalore, dated 17.11.2004

After careful consideration of the proposal of Inspector General of Police, Bangalore Metropolitan Task Force, Bangalore the Government are pleased to order that for the paragraphs 1 and 2 under the "The functions of the task force" in G.O. No. UDD 110 MNU 97, dated 28.8.97 the following shall be substituted:-

1. "Better protection of property (including lands) belonging to Government, Bangalore City Corporation, Bangalore Development Authority, Bangalore Water Supply and Sewerage Board, Karnataka Slum Clearance Board, City Municipal Councils, Town Municipal Councils including tanks, lakes and tank-beds handed over for maintenance to the Forest Department within Bangalore Urban District, Bangalore Rural District and in Bangalore Metropolitan Region as defined in section 2(c) BMRDA Act, 1985" and the areas coming under the jurisdiction of Bangalore-Mysore Infrastructure Corridor Local Planning Authority in Bangalore District and any other property specified by Government from time to time through notifications and Government Orders.

2. The detection of Commission or any design to commit any offence, the investigation and prosecution of such offences relating to the unauthorized occupation of land belonging to the Government, the Bangalore City Corporation, the Bangalore Development Authority, the Bangalore Water Supply and Sewerage Board, the Karnataka Slum Clearance Board, the City Municipal Councils and Town Municipal Councils in the jurisdiction of Bangalore Urban District, Bangalore Rural District and in Bangalore Metropolitan Region as defined in Section 2(c) of BMRDA Act, 1985 and the areas coming under the jurisdiction of Bangalore-Mysore infrastructure Corridor Local Planning Authority in Bangalore District and in any other area specified by Government from time to time through notifications and Government Orders and other offences and irregularities committed under the following enactments.

- a. The Karnataka Municipal Corporations Act, 1976
- b. The Bangalore Development Authority Act, 1976
- c. The Karnataka Municipalities Act, 1964
- d. The Bangalore Water Supply and Sewerage Board Act, 1964
- e. The Karnataka Slum Areas (Improvement and Clearance Act, 1973)
- f. The Karnataka Land Revenue Act, 1964

- g. The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978
- h. The Karnataka Land Reforms Act, 1961
- i. Inam Abolition Acts
- j. The Indian Penal Code
- k. The Karnataka Police Act, 1963
- l. The BMRDA Act, 1985.

17. It is pertinent to note that Paragraph-3 contained in notification dated 28.08.1997 which empowered BMTF to identify the employees and officers of the organizations enumerated therein, who collude with the public in committing the offences of creating false and forged documents which involves loss of revenue and to take action against such officials and officers as per law, was not substituted nor deleted. In other words, the said power continued to be vested with BMTF. During the years 2011 and 2012, large number of cases both against the employees and officers of the organizations and also against private citizens were registered by BMTF for offences falling under the Indian Penal Code. Questioning the authority of BMTF in registering the cases and also launching prosecutions, large number of petitions including this batch of petitions invoking powers of this court under Articles 226 and 227 of Constitution of India, r/w. Section 482 of Cr.P.C. were filed before this Court mainly contending that BMTF has no jurisdiction to register the case and investigate the offences falling under Indian Penal Code without attracting the offences under any of the enactments enumerated in the earlier notifications in relation to unauthorized occupation of the property belonging to the Government or other authorities. In all these petitions, reliance was placed on the decision of this court in Dr. S.M. Kalligudd's case referred to supra. In the light of the pendency of large number of petitions before this court, the Government to clarify the position regarding the powers and functions of BMTF, issued order No. UDD 349 MNU 2011 dated 02.02.2013, which reads as under:-

PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA

Subject: Functions and powers of Bangalore Metropolitan Task Force (BMTF)

PREAMBLE:

The Government vide order No. UDD 247 MNU 95 dated 19.03.1996 has given sanction to constitute a force to be called the Bangalore Metropolitan Task Force (BMTF). Vide Government Order No. UDD 247 MNU 95 dated 15.04.1996 it has extended further powers to this Task Force. Vide Notification No. HD 231 PEG 95 dated 27.05.1996, the Government has declared the office of the Deputy Inspector General of Police, BMTF Bangalore as a police Station for the Bangalore Metropolitan area u/s. 2(s) of the Code of criminal Procedure, 1973 in respect of certain offences specified in the Notification. Subsequently Government has

issued orders No. UDD 110 MNU 97, dated 28.08.1997, G.O. No. UDD 1 BMR 2001 dated 06.08.2001, Notification No. HD 181 POP 2001 dated 02.09.2002, G.O. No. UDD 132 MNU 2004 dated 17.11.2004, G.O. No. UDD 88 BMR 2004 dated 22.06.2004, G.O. No. UDD 403 MNU 2010, dated 18.02.2011 with regard to the powers and functions of the BMTF.

2. Bangalore Metropolitan Task Force (BMTF) constituted in 1996 was specially entrusted with the task of protection of Government lands, lakes and public property in the city of Bangalore. They were specially empowered to deal with the offences arising out of the steps taken by them in line with these objectives.

3. However there is confusion with regard to the jurisdiction and scope of the powers of the BMTF. An appraisal of the large number of cases being investigated by the BMTF in which investigation has been stayed by the Honourable High Court reveals that investigations in majority of cases in being conducted under Indian Penal Code (IPC) only. No offence has been registered and being investigated under the Special Acts pertaining to protection of Government lands, property etc. It is also seen that investigations have been taken up under the Act like Karnataka Town and Country Planning Act under which the BMTF has not been specifically authorized.

4. The deliberations and objections leading to the issue of Government Order No. UDD 247 MNU 95 dated 19.03.1996 and notification No. HD 231 PEG 95 dated 27.05.1996 clearly bring out that the powers under relevant provisions of IPC were entrusted for effective enforcement of the enactments pertaining to urban governance. All subsequent orders and notifications are in consonance with this approach only. The Government order creating BMTF states that BMTF shall work for the better protection of the public properties in the Bangalore Metropolitan Area. It shall take special measures to protect tanks, lakes and tank beds in the Bangalore Metropolitan Area. BMTF booking cases under IPC for forgery, atrocities is encroachment on the powers of the local jurisdictional police station. Government envisaged BMTF as a specialized force for the offences under Special Acts. BMTF straying the other areas would result in loss of focus and objectives for which it was created. This would also result in thin spreading and burdening of the man power of the BMTF. Most importantly the function of protection of the public properties like lakes, tanks, parks in the Bangalore Metropolitan Area would recede in to the background. BMTF investigating cases for all kinds of offences makes it like a Police Station for the entire Bangalore Metropolitan Area which was neither intended by the Government and nor is in public interest.

5. The first notification No. HD 231 PEG 95 of the Government after creation of BMTF issued on 27.5.1996 was also the subject matter before the Honorable High Court which vide its order in Dr. S.M. Kalligudd and Others vs. State of Karnataka and Others on 28 May, 1997 has held "On a plain reading of the notification it is quite clear that the Officer-in-charge of the said police station can register a case and proceed with the investigation of case if the facts containing in the FIR disclose the offences under the said Special Acts read with

or without those under the Indian Penal Code and the Karnataka Police Act. Consequently, it has to be held that if the FIR discloses commission of offences only under the Indian Penal Code or under the Karnataka Police Act, then it will not be competent on the part of the Officer in charge of the police station constituted under Annexure-H to proceed with the investigation thereof." Thus the Honorable High court and made it clear that the jurisdiction of the Task Force operates when there is an offence under the Special Acts dealing with the protection of Government lands, lakes and public property in the Bangalore Metropolitan Area. This is clearly in line with Government objectives also. The Government had never intended to create BMTF as a Police Station for all offences in the Bangalore Metropolitan Area.

6. There appears to be misinterpretation of subsequent orders of the government and especially Notification No. HD 181 POP 2001 dated 2.9.2001 which does not refer specifically to any of earlier orders and notifications. It is therefore, necessary to clarify the position in line with Government's objectives and law laid down by the Honorable High Court in the case mentioned above. It is necessary to reiterate that the basis on which the Government issued the notification which was the subject matter in the case Dr. Kalligudd and Others vs. State of Karnataka And Others on 28 May, 1997 in the Honorable High Court has not changed. Thus the law laid down by the Honorable Court is to be followed. The objective for which the BMTF was created and its jurisdiction and focus needs to be limited to Special Acts which empower it to take steps for the purposes of protection of Government lands, lakes and public property in the Bangalore Metropolitan Area. Hence, the following order:-

GOVERNMENT ORDER NO. UDD 349 MNU 2011, BANGALORE DATED 02-02-2013

7. Government is pleased to supersede all orders and notifications issued subsequent to Government order No. UDD 247 MNU 95 dated 19.03.1996. Hence Government Order No. UDD 247 MNU 95 dated 15.04.1996, Notification No. HD 231 PEG 95 dated 27.05.1996, G.O. No. UDD 110 MNU 97 dated 28.08.1997, G.O. No. UDD 1 BMR 2011 dated 06.08.2011, Notification No. HD 181 POP 2001 dated 02.09.2002, G.O. No. UDD 88 BMR 2004 dated 22.06.2004, G.O. No. UDD 132 MNU 2004 dated 17.11.2044, G.O. No. UDD 403 MNU 2010 dated 18.02.2011 with regard to the powers and functions of the BMTF stand superseded. In addition to the enactments mentioned in Government Order No. UDD 247 MNU 95 dated 19.03.1996, the Bangalore Metropolitan Task Force (BMTF) is empowered to enquire into the offences pertaining to Government land and property under the following laws in the Bangalore Metropolitan area.

1. Karnataka Land Revenue Act, 1964
2. Karnataka Land Reforms Act, 1961
3. Inam Abolition Acts
4. The BMRDA Act, 1985

5. Karnataka SC/ST (Prohibition of Transfer of Certain Lands) Act, 1978

8. BMTF can register a case and proceed with the investigation of case if the facts contained in the complaint disclose the offences under the Special Acts mentioned in G.O. No. UDD 247 MNU 95 dated 19.03.1996 and those mentioned above read with or without those relevant under the Indian Penal Code and the Karnataka Police Act. If the complaint discloses commission of offences only under the Indian Penal Code or under the Karnataka Police Act, then it will not be competent on the part of the BMTF to proceed with the investigation thereof.

18. This notification was followed by another notification dated 06.02.2013, which reads as under:

HOME SECRETARY NOTIFICATION

No. HD: 254: POP: 2012, Bangalore, Dated 06/02/2013.

In exercise of the powers conferred by clause (s) of Section 2 of the Code of Criminal Procedure, 1973 (Central Act, 2 of 1974) and in supersession of all the earlier notifications issued in this behalf, the Government of Karnataka, hereby declare, the places specified in column (2) of the schedule below, as Police Station and specify the local areas mentioned in the corresponding entries in column (3) thereof as local areas included within the jurisdiction of those Police Stations.

The Bangalore Metropolitan Task Force shall have the jurisdiction in respect of the offences under the Karnataka Municipal Corporation Act, 1976 (Karnataka Act No. 14 of 1977), the Bangalore Development Act, 1976, (Karnataka Act No. 12 of 1976), the Karnataka Municipalities Act, 1964 (Karnataka Act No. 22 of 1964) the Bangalore Water Supply and Sewerage Act, 1964 (Karnataka Act No. 36 of 1964), the Karnataka Slum Areas (Improvement and Clearance), Act 1973 (Karnataka Act No. 33 of 1974), the Karnataka Land Revenue Act, 1964 (Karnataka Act No. 12 of 1964), the Karnataka Land Reforms Act, 1961 (Karnataka Act No. 10 of 1962), the Mysore (religious and charitable) In an Abolition Act, 1955 (Mysore Act 18 of 1955), the Bangalore Metropolitan Region Development Authority Act, 1985 (Karnataka Act No. 39 of 1985), the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of transfer of certain lands) Act 1978 (Karnataka Act No. 2 of 1979), read with Chapter II u/s 34 of the Indian Penal Code 1860 (Central Act No. 45 of 1860) along with relevant main offence, Chapter V under Sections 107 to 120 of the Indian Penal Code of 1860 (Central Act No. 45 of 1860), Chapter VI u/s 120B along with relevant main offence, Chapter VIII under Sections 143, 144, 145, 147, 148, 149, 150 and 151 of the Indian Penal Code 1860 (Central Act No. 45 of 1860), Chapter XI under Sections 217 and 218 of the Indian Penal Code, 1860 (Central Act No. 45 of 1860), Chapter XVI under Sections 332, 333, 353 of the Indian Penal Code, 1860 (Central Act No. 45 of 1860), Chapter XVII under Sections 403, 406, 407, 408, 379, 409, 417, 418, 419, 420, 423, 424, 426, 427, 431, 432, 434, 435, 436, 447, 448, 455, 456, 457 of the Indian Penal Code, 1860 (Central Act No. 45 of

1860), Chapter XVIII 456, 463, 467, 468, 471, 472, 473, 474, 475, 476, 477, 477A of the Indian Penal Code, 1860 (Central Act No. 45 of 1860), and Sections 54, 55, 56, 94, 113 & 114 of the Karnataka Police Act, 1963 (Karnataka Act No. 4 of 1964) all read under main offence.

This notification will come into force with effect from the date of its publication in the official gazette.

19. Soon after the notification dated 02.02.2013 was issued and published, a Public Interest Litigation came to the filed in Writ Petition Nos. 12381-12382/2013 by one H. Promod and G.K.C. Reddy contending that in the background of BMTF initiating proceedings against Ministers, Members of the Legislative Assembly and officers, the Government with an intention to shield the corrupt politicians and officers, has issued the order dated 02.02.2013 to curb the activities of BMTF and thereby has curtailed the powers of BMTF. In the said Public Interest Litigation, the State in its statement of objections contended that BMTF was originally constituted with the objectives of effective investigation and adjudication of offences, prosecution of the persons indulging in unauthorized occupation of Government properties and for that purpose, it has been declared as a "Police Station" to enable registration and investigation of the cases and subsequently, when the jurisdiction of BMTF was extended to other areas in Malur Taluk of Kolar District, it was declared as new "Police Station" to cover all the officers under BMTF and since there was extensive overlapping, of jurisdiction in respect of some offences and when the performance of BMTF was examined, it was revealed that BMTF had registered number of cases and registration of such cases were challenged before this court on the ground of want of power, authority and jurisdiction and since there was a direction in Writ Petition No. 12278/2007 that the Government should hold a meeting of all the departments and sort-out certain overlapping powers and since it was also noticed by the Government that the investigation in majority of the cases were being conducted by BMTF only for the offences under Indian Penal Code and not under the Special Acts pertaining to protection of Government lands and properties, the Government felt it necessary to issue clarification. Therefore, the Government with a view to remove the anomaly created by overlapping of jurisdiction and to protect the actions of BMTF from being questioned for want of authority under law, issued the impugned notification dated 02.02.2013. The State further contended that the powers of BMTF have not been taken away by the impugned order and that the BMTF can register cases and proceed with the investigation if the facts contained in the complaint discloses the offences under the Special Acts with or without the allegation of commission of offences under the Indian Penal Code. In the light of the statement of objections filed by the State, by order dated 23.07.2013, the said Public Interest Litigation was disposed by observing thus in Paragraphs-4 & 5:-

4. After perusal of the statement of objections and the submissions made on behalf of the respondents, it was clearly and fairly conceded on behalf of the

petitioners that the powers of the BMTF were not sought to be curtailed by the impugned order, but in fact, clarified with the condition that if the complaint discloses commission of offences only under Indian Penal Code or the Karnataka Police Act, it would not be competent for the BMTF to proceed with the investigation thereon. Barring that, there is no prohibition or restriction on BMTF against detection or investigation of any offences under the specified enactments or against implication of any Government Officer if he were found to be involved in the commission of the alleged offence.

5. In view of these submissions and clarifications, the petitions are not required to be entertained and in fact, they are not pressed for any further orders. Accordingly, they are disposed of along with the interim application made therein, with no order as to cost.

20. In the light of various notifications issued by the Government which are extracted supra, and in the light of the stand taken by the Government before the Division Bench in the Public Interest Litigation, the question as to whether BMTF had jurisdiction to register the case for various offences alleged in Crime No. 4/2011 has to be considered.

21. Section 2(s) of Cr.P.C. defines "Police Station" to mean, any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf. From the definition of "Police Station", it is clear that the Government is empowered to declare any post or place as a "Police Station" and such Police Station could be a general or it could be special for a particular purpose.

22. As per Section 154 of Cr.P.C., if an information relating to the commission of cognizable offence is given to an officer in-charge of a Police Station orally, it should be reduced to writing by him or under his direction and thereafter the same should be read-over to the informant and substance of every such information, whether given in writing or reduced to writing, should be entered in a prescribed book. As per sub-section (1) of Section 156 Cr.P.C., any officer in-charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter-XIII. According to sub-section(2) of Section 156 Cr.P.C., no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate such offence. Section 157 of Cr.P.C. deals with the procedure for investigation. According to sub-section (1) of this section, if, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered u/s 156 to investigate, he shall forthwith send a report of the same to the Magistrate empowered to take cognizance of such offence upon a police report and shall proceed further.

23. As per the notification dated 19.03.1996, under which BMTF was constituted read with subsequent notification dated 27.05.1996, as held by this court in Dr. S.M. Kalligudd's case, the BMTF was empowered to register and investigate cases only relating to unauthorized occupation of public properties which constitute an offence under the enactments enumerated therein and any of the offences punishable under Indian Penal Code, as indicated in the notification dated 27.05.1996. As a corollary, it could not register and investigate a case exclusively punishable under Indian Penal Code or Karnataka Police Act. In other words, BMTF had power to register and investigate a case which is an offence under the specific enactments mentioned in the notification with or without any offences punishable under Indian Penal Code or Karnataka Police Act. However, under the notification dated 28.08.1997 issued subsequent to the decision of this court in Dr. S.M. Kalligudd's case, the powers of BMTF was extended to identifying those employees and officers of the organizations mentioned therein, who collude with the public in committing the offences by creating false and forged documents, which involves any loss of revenue and to take actions against them as per law. From this, it is clear that BMTF was empowered to proceed against the employees and officers of the organizations and also against a private persons, who commit the offences of creating false and forged documents, which result in loss of revenue. Obviously, those acts constitute offences punishable under Indian Penal Code. This gives an indication that BMTF had jurisdiction to register and investigate the cases relating to the aforesaid offences against officials and officers of the organizations mentioned therein and also against any other person. This is with a view to protect and safeguard the funds of the organizations mentioned therein.

24. Section 149 of the Karnataka Municipal Corporations Act, 1976 describes "Corporation Funds" as, all moneys received by or on behalf of the Corporation by or under this Act or any other law, all taxes, tolls and other imposts, fines fees, penalties paid to or levied by it under this Act, all proceeds of land or other property sold by the Corporation and all rents accruing from its land or property and all interest profits and other moneys accruing by gifts or transfers from the Government or private individuals or otherwise shall constitute the Corporation fund and shall be held, applied and disposed of in accordance with the provisions of this Act, the rules and the regulations made thereunder or any other law for the time being in force.

25. The word "Property" denote everything, which is subject of ownership, corporeal or in - corporeal; tangible or intangible; visible or invisible; real or personal and everything that has an exchangeable value or which goes to make-up wealth or estate or status. Therefore, the funds of the Corporation or the funds of other organizations enumerated in the notifications are the property of such organizations. The object of constituting the BMTF, as noticed supra, was for better protection of the property belonging to the Government and other organizations enumerated in the notifications which includes BBMP. No doubt, by the latest notification dated 02.02.2013 all the earlier notifications, except

notification dated 19.03.1996, have been superseded. However, even as per the notification dated 19.03.1996, the functions of BMTF was for the better protection of the property belonging to the Government, BBMP and other Authorities. The case in Crime No. 4/2011 came to be registered much prior to the clarificatory notification dated 02.02.2013. Thus, as on the date of the registration of the case, notification dated 28.08.1997 and notification dated 07.11.2004 were very much in force and as per those notifications, BMTF had jurisdiction to register and investigate the case against the employees and officers of the organizations as well as the public in relation to the offences of creation of false and forged documents and thereby causing loss of revenue. Therefore, though it may be held that BMTF is not a "Police Station" in general terms, but a "Police Station" which required to function within the limited powers and spheres, nevertheless, as per the notifications which were in force as on the date of registration of the case in Crime No. 4/2011, the BMTF had jurisdiction and authority to register and investigate the cases involving the offences of creating false and forged documents resulting in loss of revenue of the organizations, against the employees and officers of the organizations as well as the public, with whom the employees and officers have colluded in committing such offences. This power, in my considered opinion, is very much in consonance with the objectives and purpose, for which BMTF was constituted i.e., to protect the properties, which includes the funds of the organizations. Even as per the notification dated 02.02.2013, confusions had been created as to the powers and functions of BMTF and the same came to be clarified only by the said notification.

26. As noticed supra, the case in Crime No. 4/2011 came to be registered on the basis of the report which contained allegations of creation of false and forged documents resulting in defalcation of funds of BBMP which are punishable under various sections of Indian Penal Code. Therefore, looking from any angle, it cannot be said that as on the date of the registration of the case in Crime No. 4/2011, the BMTF had no jurisdiction or authority to register the said case for the offences mentioned therein, which are punishable under various sections of Indian Penal Code. Therefore, I find no substance in the challenge made by the petitioners as to the jurisdiction and authority of BMTF in registering the case.

27. Assuming for the purpose of argument that BMTF had no jurisdiction to register the case for the offences alleged, in view of the transfer of the investigation to CID immediately thereafter and since the entire investigation has been conducted by the CID police, the prosecution cannot be quashed on the ground of want of jurisdiction on the part of the Investigating Officer. Even if an Officer in charge of police station had no jurisdiction either territorial or otherwise, whenever an information regarding commission of cognizable offence is given to him, as mandated by Section 154 of Cr.P.C., he is bound to reduce the information, if it is given orally, into writing or where the information is given in writing, to receive the same and then, he is required to enter the substance thereof in the prescribed book and thereafter proceed further in accordance with law.

28. The Apex Court in Ashok Kumar Todi's case referred to supra, after referring to the definition of word "Investigation" found in Section 2(h) of Cr.P.C., has ruled thus in Paragraph-48:-

48. Under the scheme of the Code, investigation commences with lodgment of information relating to the commission of an offence. If it is a cognizable offence, the officer in charge of the police station, to whom the information is supplied orally has a statutory duty to reduce it to writing and get the signature of the informant. He shall enter the substance of the information, whether given in writing or reduced to writing as aforesaid, in a book prescribed by the State in that behalf. The officer-in-charge has no escape from doing so if the offence mentioned therein is a cognizable offence and whether or not such offence was committed within the limits of that police station. But when the offence is non-cognizable, the officer-in-charge of the police station has no obligation to record it if the offence was not committed within the limits of his police station. Investigation thereafter would commence and the Investigating Officer has to go step by step.

(Underlining by me)

29. Thus, even where an officer-in-charge of police station had no territorial jurisdiction to investigate the offence alleged in the information lodged, he is under an obligation to receive the information, enter the substance thereof in the prescribed book. If for any reason, the officer finds that he has no territorial jurisdiction to investigate, he should transmit the same to the police station having jurisdiction. If such an officer otherwise has no jurisdiction to investigate the cognizable offence disclosed in the information, he is required to transfer the same to the officer having jurisdiction. Assuming that BMTF had no jurisdiction either territorial or otherwise to investigate the case for the offences alleged, still since the information was given to the officer in-charge of the BMTF police station, such officer was bound to receive the same, act in accordance with Section 154 of Cr.P.C. and transmit the same to the officer/police station competent to investigate. Therefore, registration of the case by BMTF, looking from any angle cannot be held as illegal. In the case on hand, since the investigation was transferred to the CID police, no illegality can be attached to the investigation. Therefore, looking from any angle, the challenge to the registration of the case by BMTF fails. In addition to this, some of the petitioners namely, B.G. Prakashkumar, the 1st petitioner in W.P. No. 23336/2013, Mallikarjunagouda, the 2nd petitioner in W.P. Nos. 7303-7306/2012 and M. Prabhu, the 4th petitioner in W.P. No. 7246-7250/2012 and W.P. Nos. 7255-7250/2012, 3rd petitioner in W.P. Nos. 7260- 7262/2012, 3rd petitioner in W.P. Nos. 7286-7288/2012, 4th petitioner in W.P. Nos. 7295-7298/2012 and 2nd petitioner in 7307-7309/2012 along with two other persons namely, Keera Naik and Ranganath had earlier filed a batch of writ petitions in W.P. Nos. 1156-1160/2012 seeking to quash the FIR in Crime No. 4/2011 filed by BMTF police. The said writ petitions were heard and disposed by another Single Bench

of this Court on 01.08.2013 dismissing the said petitions holding that the petitioners therein have no locus standi to file the writ petitions on the ground that unless any liability or responsibility, or commissioning of the offences is found against them, they do not have any grievance to file the petitions. It was further held in the said order that the Government has now handed-over the investigation to CID, who is competent authority to go into the matter and it is for the Government to decide to whom the investigation has to be handed-over and that BMTF had jurisdiction to register the case. Thus the attempt on the part of some of the petitioners in this batch of writ petitions to get the FIR quashed has failed. Of course, the aforesaid persons who are parties to writ petition Nos. 1156-1160/2012 by filing memos in this batch of writ petitions have sought for dismissal of the writ petitions insofar as they are concerned. Having regard to the above discussions, I find no substance in any of the contentions as to the challenge to the authority and jurisdiction of BMTF to register the case. Therefore, I answer Point No. 1 holding that the BMTF had jurisdiction to register the case for the offences mentioned in Crime No. 4/2011.

Regarding Point No. 2:

30. As noticed supra, the Government by notification dated 28.08.2011, transferred the investigation of the case in Crime No. 4/2011 from BMTF police to CID in respect of illegalities and irregularities in asphaltting the roads and other works carried in Gandhinagar, Malleshwaram, Rajarajeshwari Nagar Engineering Division of BBMP from the year 2005-06 up-to-date. Though subsequently by notification dated 07.12.2011, the investigation was restricted only to the work of asphaltting the roads, the said notification dated 07.12.2011 was modified by notification dated 01.02.2012 by directing the CID to investigate into all illegalities and irregularities committed in the aforesaid Divisions. Thus, the entire case was entrusted to CID for investigation. As noticed supra, it was contended on behalf of the petitioners that the transfer of investigation was a colorable exercise of power by the Government and that the Government had no jurisdiction to entrust the investigation to CID. It was also contended that since initial registration of the case was without jurisdiction, the transfer of investigation to CID does not validate the registration or the investigation. However, in view of my findings on Point No. 1, this argument has no force and it is accordingly rejected.

31. The Karnataka State Police Force was created by Section-3 of Karnataka Police Act, 1963. The Director-General and Inspector-General of Police of Karnataka State is the head of the Karnataka State Police Force. Section-4 of the Police Act vests superintendence over Police Force in the Government. Section-4 of the K.P. Act reads as under:-

Sec. 4: Superintendence of Police Force to vest in the Government,- The superintendence of the Police Force throughout the State vests in and is exercisable by the Government and any control, direction or supervision exercisable by any officer over any member of the Police Force shall be

cognizable subject to such superintendence.

32. Section-6 of the K.P. Act confers power on the Director-General and Inspector-General of Police subject to the power of State Government, to exercise the general control and supervision of the functioning of the Police Force in the State. Criminal Investigation Department is also part of the State Police Force, which was established for investigating the cases involving heinous offences as are mentioned in Chapter XLIV of the Mysore Police Manual-Volume II.

33. In *Narasimhaiah Vs. State and Another*, this court has referred to standing order No. 630 found in the Mysore Police Manual issued from the office of the then Inspector General of Police, Karnataka State. According to the said standing order, a Special Investigating Police Wing names. "Corps of Detectives" ("C.O.D" in short) was created and established in the C.I.D. establishment in order to achieve maximum result in detection of crimes and also with a view to inspire public confidence in the police administration. It is further observed therein that, Paragraph-9 of the said Standing Order declares "The Corps of Detective will have its Headquarters in Bangalore, with jurisdiction through-out the State and paragraph-13 thereof provides for the classes of crimes to be investigated by the CID as enumerated in Order 1729 of the Police Manual: Volume-II. As per Clause (m) of Police Manual: Volume-II, the crimes are listed in different categories under that paragraph. Under Category (m), it is stated that, "Cases of such a complicated nature as, in the opinion of the IGP or I.D.G.P. or the District Authorities, call for investigation by an Officer of the Corps of Detectives". Thus, the CID police have jurisdiction through-out the State. The State Government having complete power of superintendence over the police force in the State, is empowered to order transfer of investigation of any case to the Specialized Agency namely C.I.D. Police. Therefore, it cannot be said that the Government has no power or authority to transfer investigation. The Government while taking policy decision having regard to the nature of the allegations which involves defalcation of funds of BBMP running to several hundred of crores over a period, thought it fit to Transfer the investigation to C.I.D.

34. In *Narasimhaiah's* case referred to *supra*, reference has been made to Government Order dated 24.01.1990 by which, the Government took a policy decision that all cases registered in respect of deaths in police custody should be investigated by C.O.D. and in Paragraph-17 of the said Government Order dated 24.01.1990, it is stated that Sub-Inspectors and officers superior in rank in the C.I.D. are competent to undertake investigation at any places in the State for offence and they shall be deemed to be officer in-charge of the police station within the limits of which such place is situate. Thereafter, reference has also been made in the said decision to the Government notification No. HD 83 PEG 69 dated 13.02.1970, wherein according to which, the Sub-Inspector of Police, C.I.D. is deemed to be an officer in-charge of police station, whenever he investigates at any place in the State an offence within the limits of which such

place is situate. Thus, for the purpose of investigation of any particular crimes, on the direction of the State Government or the Superior Competent Police Officer, makes the position of CID/COD to be a "Police Station" within the meaning of Section 2(s) and every police officer attached to this organizations of the rank of Sub-Inspector and above, is "Police Officer-in-charge of a Police Station" within the meaning of Section 156(1) of Cr.P.C. Therefore, the CID police has jurisdiction to investigate the matter since the Government in exercise of its power of superintendence over the Police Force has ordered transfer of the investigation of the case. Therefore, I find no substance in the contention urged either regarding the power of the Government in ordering transfer of the investigation to the C.I.D. or the power of the police Officer to investigate into the matter. Therefore, the contentions urged in this regard are rejected.

35. As noticed supra, it is the contention of the learned counsel appearing for the petitioners that CID Police had no jurisdiction to file the charge sheet before the jurisdictional Magistrate since they were directed by the Government to submit a report to the Government, as such, the charge sheets filed are without jurisdiction. I find no substance in this contention. The Government in exercise of its power of superintendence over the Police Force and having regard to the seriousness of the allegations made involving huge sums of public money, transferred the investigation to CID Police. Of course, in the notification, the CID was directed to complete the investigation at an early date and take steps to submit the report to the Government. This direction in my considered opinion, does not come in the way of the power of the CID Police as officers-in-charge of the police station to file final report in terms of Section 173(2) of Cr.P.C. on completion of investigation. The Government notification does not preclude the CID Police from exercising the power vested in the Investigating Officer to file final report u/s 173(2) of Cr.P.C. to the jurisdictional court. In every case registered in respect of cognizable offences u/s 154 of Cr.P.C., the officer-in-charge of the police station having jurisdiction to investigate, is empowered to proceed with the investigation and on completion of investigation to form opinion as to whether on the materials collected, there is a case to place the accused before the Magistrate for trial and if so, to take necessary steps for the same by filing a charge sheet u/s 173(2) of Cr.P.C. The Apex Court in Ashok Kumar Todi's case referred to supra, in Paragraph-49 has set-out various steps contemplated by Code of Criminal Procedure to be carried-out during investigation, which reads as under:-

49. The Code contemplates the following steps to be carried-out during such investigation:-

- i) proceeding to the spot;
- ii) ascertainment of the facts and circumstances of the case;
- iii) discovery and arrest of the suspected offender;
- iv) collection of evidence relating to the commission of the offence which may

consist of-

- a) The examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit,
- b) The search of places or seizure of things considered necessary for the investigation and to be produced at the trial; and
- v) formation of opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and, if so, to take necessary steps for the same by filing of charge sheet u/s 173.

Therefore, in the light of the above, it cannot be said that the CID Police had no competence to file charge sheet u/s 173(2) of Cr.P.C. Having regard to the fact that the Government transferred the investigation to CID police, the CID police assumed the status of officer-in-charge of the police empowered to take all necessary steps as contemplated by the Code regarding investigation of the case including the power to form final opinion and to place the charge sheet before the jurisdictional court. Merely because, in the notification issued by the Government, CID was directed to submit a report to the Government, it cannot be interpreted that the CID police had no jurisdiction to file the charge sheet in terms of Section 173(2) of Cr.P.C. The direction so contained in notification will have to be construed as a direction to CID to submit a status report to the Government as to the action taken by it in respect of the investigation of the case entrusted to it. In this view of the matter, I find no substance in the said contention and accordingly, it is rejected.

36. Yet another argument which calls for consideration is about C.I.D. filing multiple charge sheets. There is no statutory provisions which curtails the power of the Investigating Officer to file multiple charge sheets. As noticed supra, the allegations made in the FIR were general in nature. Without mentioning the names of any of the officials/officers/person in the FIR, it was generally stated that there is large scale defalcation of the funds of BBMP on the basis of the forged, fabricated and created documents and the entire matter requires a detailed investigation. It was for that reason only, the case was registered against the persons to be identified as accused. The investigation relate to a long period from 2005-06 upto 2011-12 in respect of different Engineering Divisions. The illegalities and irregularities alleged, covers large number of officials and officers apart from Civil Contractors. Therefore, having regard to the above facts and circumstances, it cannot be expected that the CID should file a single charge sheet. On the other hand, on completion of investigation as regards particular work during a particular period, the CID has filed charge sheets against those officers/officials/contractors involved in such work. Therefore, I find no illegalities or irregularities in CID filing multiple charge sheets. In fact, according to the learned Advocate General, as on today, the Investigating Officer is able to complete the investigation in respect of certain works only since it involves examination of large amount of records, registers, etc. and therefore, very few

charge sheets have been filed and many more charge sheets are expected to be filed, as and when the investigation progresses.

37. In the light of the above discussions, I find no substance in the contentions raised on behalf of the petitioners about the CID filing multiple charge sheets.

Regarding Point No. 3:

38. Upon the CID filing charge sheets, the jurisdictional Magistrate has taken cognizance of the offences alleged and has directed issue of summons to the persons arraigned as accused in the charge sheets filed. The order taking cognizance has been questioned on the ground that in the absence of sanction u/s 197 of Cr.P.C., the jurisdictional Magistrate had no power or authority to take cognizance, as such, the said order is without jurisdiction. In the light of this, it is necessary to consider, as to whether the cognizance taken, is bad for want of sanction u/s 197 of Cr.P.C. Section 21 of I.P.C. defines "Public servant". According to Clause (b) of description Twelfth of Section 21, every person in the service or pay of local authority, a corporation established by or under the Central, Provincial or State Act or Government Company as defined in Section 617 of the Companies Act, 1956 is a "Public Servant" within the meaning of that Section. Therefore, officers and officials of BBMP, which is a corporation established under the State Act, are "Public Servants" within the meaning of Section 21 of I.P.C. Section 197 of Cr.P.C. directs that when a Public Servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him, while acting or purporting to act in discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction of the competent authority. Therefore, to attract the bar created u/s 197 of Cr.P.C., a person accused of the offences must be a "Public Servant" and such "Public Servant" must have committed such act while acting or purporting to act in discharge of his official duty. In other words, if the offences alleged, though committed by a public servant, has nothing to do with the discharge of his official duty, the bar is not attracted.

39. In *Raghunath Anant Govilkar Vs. State of Maharashtra and Others*, , the Apex Court has held thus in Paragraphs-6, 10 & 11:

6. The protection given u/s 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if it choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his

duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty; if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.

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10. Such being the nature of the provision the question is how should the expression "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" be understood? What does it mean? "Official" according to the dictionary means pertaining to an office and "official act" or "official duty" means an act or duty done by an officer in his official capacity. In *B. Saha Vs. M.S. Kochar* it was held: (SCC pp. 184-85, para 17)

17. The words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, "it is no part of an official duty to commit an offence, and never can be". In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the

performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision.

11. Use of the expression "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

40. In *Om Prakash and Others Vs. State of Jharkhand and Another*, , which is relied upon by the learned Senior Counsel and other counsels appearing for the petitioners, the Apex Court by referring to Constitutional Bench's decision in the case of *Matajog Dobey Vs. H.C. Bhari*, , has held thus in Para-34:-

34. In *Matajog Dobey*, the Constitution Bench of this Court was considering what is the scope and meaning of a somewhat similar expression "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" occurring in Section 197 of the Criminal Procedure Code (5 of 1898). The constitution Bench observed that no question of sanction can arise u/s 197 unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. On the question as to which act falls within the ambit of above-quoted expression, the Constitution Bench concluded that there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim that he did it in the course of performance of his duty. While dealing with the question whether the need for sanction has to be considered as soon as the complaint is lodged and on the allegations contained therein, the Constitution Bench referred to *Hori Ram Singh* and observed that at first sight, it seems as though there is some support for this view in *Hon Ram Singh* because *Sulaiman J.*, has observed in the said judgment that as the prohibition is against the institution itself, its applicability must be judged in the first instance at the earliest stage of institution and *Varadachariar, J.* has also stated that: (*Matajog Dobey Case*, AIR p. 49, para 20)

20.....the question must be determined with reference to the nature of the allegations made against the public servant in the criminal proceedings." It is pertinent to note that the Constitution Bench has further observed that a careful perusal of the later parts of the judgment. However show that the learned Judges did not intend to lay down any such proposition. The Constitution Bench quoted the said later parts of the judgment as under: (*Matajog Dobey Case*, AIR pp. 49-50, para 20)

20..... *Sulaiman, J.*, refers to the prosecution case as disclosed by the complaint or the police report; and he winds up the discussion in these words: (*Hori Ram*

Singh Case, AIR p. 52: FCR p. 179)

.... Of course, if the case as put forward fails, or the defence establishes that the act purported to be done (is) in execution of duty, the proceedings will have to be dropped and the complaint dismissed on that ground.

The other learned Judge also states: (Hori Ram Singh Case, AIR p. 55: FCR p. 185)

.....At this stage, we have only to see whether the case alleged against the appellant or sought to be proved against him relates to acts done or purporting to be done by him in the execution of his duty.

It must be so, the question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction.

Whether sanction is necessary or not may to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case.

The legal position is thus settled by the Constitution Bench in the above paragraph. Whether sanction is necessary or not may have to be determined from stage to stage. If, at the outset, the defence establishes that the act purported to be done is in execution of official duty, the complaint will have to be dismissed on that ground.

41. The aforesaid principles have been reiterated in various other decisions cited at the bar, both on behalf of the petitioners and also on behalf of the State. Therefore, there is no need to refer to all those decisions. Thus, from the settled legal position, as noticed supra, the question as to whether the sanction is necessary or not, may have to be determined from stage to stage. Therefore, the challenge as to the order taking cognizance of the offences against "Public Servants" for want of sanction at this stage, cannot be a ground to quash the prosecution. The said matter is required to be decided by the learned Magistrate from stage to stage.

42. In the case on hand, the allegations made against the "Public Servants" is fabrication of the documents and based on such fabrication and forged documents allowing payments in large sums from out of the funds of the corporation and even without the work entrusted to the contractor having not been carried-out, the bills pertaining to such purported work having been allowed and passed for payment, thereby causing loss to the BBMP and there by resulting in defalcation of funds of BBMP. Therefore, the question as to whether these alleged acts were done in discharge of the official duty will have to be considered by the jurisdictional Magistrate at the trial of the case. Therefore, in my considered opinion, the prosecution launched by CID cannot be quashed for want of sanction, as required by Section 197 of Cr.P.C. The said question is left to be

decided by the trial Court; from stage to stage as held by the Apex Court in the aforesaid decision. In view of the discussions made above and the findings recorded, I am of the opinion that there are no merits in any of the contentions urged, as such, the petitions are liable to be dismissed. Accordingly, all the petitions are dismissed.