

(2016) 04 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No. 14770/2012 (S-KAT)

M. Basappa Reddy

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 01-04-2016

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 4, Section 7
Mines and Minerals (Development and Regulation) Act, 1957 — Section 10, Section 4,
Section 4(1) (A)
Prevention of Corruption Act, 1988 — Section 13(2)</l

Citation : (2016) 04 KAR CK 0003

Hon'ble Judges : Mohan M. Shantana Goudar and K.N. Phaneendra, JJ.

Bench : Division Bench

Advocate : D.N. Nanjunda Reddy, Sr. Counsel for L.M. Chidanandayya, Advocate, for the Appellant; A.S. Ponnanna, Addl. Adv. General for H.B. Mahesh, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Phaneendra, J.—1. The Writ Petition is filed for the following reliefs:

- "i) Call for the records which ultimately resulted in passing the orders impugned.
- ii) Issue an order direction or writ in the nature of Certiorari, quashing the order dated 20.1.2012, vide Annexure-A passed by the Karnataka Administrative Tribunal in O.A. No. 108/2011;
- iii) Issue an order, direction or writ in the nature of Writ of Certiorari, quashing the order dated 4.10.2010 (Annexure-A21) vide Annexure-B to this Writ Petition) passed by the 2nd respondent in No. DPAR 9 EMV 2008 and consequently direct to pay pensionary benefits to the petitioner;
- iv) Declare the entire proceedings initiated against the Petitioner is illegal and without the authority of law;
- v) Issue an order, direction or writ in the nature of Mandamus, directing the

respondents to release the DCRG amount which has been forfeited and further directing to pay the monthly pensionary benefits to the petitioner, pending disposal of the above Writ Petition."

2. The petitioner is a retired Government servant. He retired as a Director of Mines and Geology, Government of Karnataka, Bengaluru. It is stated that from February 2004 onwards, though he had no power or authority under law to pass orders for issuance of transport permit for movement of Iron ore/Manganese ore from Patta lands in respect of which no mining lease were granted, he has deliberately issued directions to the Deputy Directors, Senior Geologists for issuance of transport permits in 82 cases for movement of iron ore and Manganese ore; Further, the petitioner has deliberately committed omissions and commissions while working as a Director, in contravention of the Mines and Mineral Development Regulation Act, 1957 (for short, "MMDR Act"); He issued 41 permits through his subordinate territorial Officers during the year 2004 which resulted in unauthorized movement of 57,747 Metric tons of Manganese ore in the District of Bellary, Tumkur and Chitradurga Districts in Karnataka State. By such acts he caused a loss to the state exchequer and committed various offences under Indian Penal Code ["IPC for short] and Prevention of Corruption Act ["PC Act" for short] and also under Mines and Minerals Development Regulation Act, 1975 ["MMRD" for short].

3. On the basis of such allegations against the petitioner and others, the Government of Karnataka in the year 2006 precisely on 26.12.2006 appointed a commission of enquiry headed by former Judge, Justice Sri. U.L. Bhat. The Commission of Inquiry was proposed to enquire into the allegations made against the then Chief Minister (Mr. Dharmasinh) also in this regard. The said inquiry commission was disbanded because Justice U.L. Bhat decided to take the assistance of CBI for investigation. Thereafter u/s. 7(2) of the Karnataka Lokayukta Act, the matter was referred to Lokayuktha for investigation and report. Inturn, the Lokayuktha has appointed three member committee to investigate into the matter headed by the Deputy Director of Department of Mines and Geology. The three member committee gave a report to Lokayuktha on 27.12.2007. Thereafter, on 8.1.2008, Additional Registrar of Lokayuktha asked for the petitioner's comments on the three member committee report. The petitioner gave his comments on 11.2.2008. After considering such comments on 6.3.2008, Lokayuktha submitted a report to the Government u/s. 12(3) of the Karnataka Lokayukta Act, recommending for taking the disciplinary action against the petitioner and also recommended to entrust the matter to Lokayuktha for inquiry. After considering the said report of the Lokayuktha, the Government decided to hold a Departmental Inquiry against the petitioner and in pursuance of the said decision, the Government entrusted the matter to Lokayuktha to hold a Departmental Enquiry against the petitioner vide order dated 17.4.2008. On 22.4.2008 the Lokayuktha entrusted the enquiry to be conducted by the Addl. Registrar for Enquiries, in turn the Additional Registrar has framed Articles of Charges on 25.4.2008/25.9.2008 and sent the same to

the petitioner for his reply. On 22.7.2007, the petitioner has submitted the statement of objections rising both legal and factual issues before the Additional Registrar for Enquiries, Lokayuktha. The petitioner also submitted his additional reply on 22.08.2008. After due enquiry, a final report was submitted by the Lokayuktha u/s. 12(3) of the Karnataka Lokayukta Act with recommendations against the petitioner on 1.9.2009 holding the charges levelled against the petitioner are proved. Thereafter, the Government issued second Show Cause Notice on 31.10.2009 for which the petitioner has filed his elaborate reply by way of objections on 7.12.2009. The Government, on considering the objections and the report has passed the order on 4.10.2010 imposing penalty on the petitioner with-holding the DCRG and all pensionary benefits to the petitioner. At that time Petitioner had already retired from service.

4. Being aggrieved by the order dated 4.10.2010 passed by the Government imposing penalty, the petitioner has challenged the same on various grounds in Application No. 108/2011. After hearing, the Karnataka Administrative Tribunal has passed a detailed judgment dated 20.1.2012. The petitioner is before this court calling in question the judgment of the Karnataka Administrative Tribunal.

5. Sri D.N. Nanjunda Reddy, learned Senior Counsel has raised two important legal points on the jurisdiction of Lokayuktha and the enquiry conducted by the Lokayuktha and on facts, he also contended that the alleged charges levelled against the petitioner are not based on any factual aspects which constitute any offence under the MMRD Act or under any other Act for the time being in force muchless under Section 13(2) of the Prevention of Corruption Act.

6. The learned counsel for the petitioner has divided his arguments into four segments in the following manner:

"(1) The Lokayuktha has no jurisdiction either to investigate or to recommend for disciplinary action against the petitioner.

(2) The Lokayuktha has no jurisdiction to conduct departmental enquiry as the provisions of the Lokayuktha Act and the KCS (CCA) Rules, do not empower the Lokayuktha to conduct departmental enquiry.

(3) The Charges framed by the Inquiry officer (Lokayukta) are without Jurisdiction and hence the whole inquiry is vitiated.

(4) On facts also no case is made-out against the petitioner."

7. Sri A.S. Ponnanna, learned Addl. Advocate General with equal force submitted before this court that the Karnataka Lokayuktha Act and the Karnataka Civil Services ("KCS" for short) Rules coupled with Classification, Control and Appeal ("CCA" for short) Rules, 1957 if read in proper perspective and meaningfully and harmoniously, the provisions make it crystal clear that they empower Karnataka Lokayuktha with jurisdiction not only to investigate the matter referred to the Lokayuktha by the Government, but also to make recommendations to the Government. He further contended that after the report is received from the

Lokayuktha, if the Government refers the matter to the Lokayuktha for further departmental enquiry, the rules also provide sufficiently for empowerment of the Lokayuktha to conduct the Departmental Inquiry and make recommendations to the Government with regard to the penalty to be imposed on to the delinquent employee of the Government. The Lokayuktha has conducted investigation in accordance with law and considering all the facts and circumstances of the case, Lokayukta recommended to the Government for initiation of the disciplinary action against the petitioner. As the Government referred the matter to Lokayuktha to conduct Departmental enquiry, the Lokayuktha has conducted the enquiry in accordance with law and made representation to the Government for appropriate orders by the Disciplinary Authority against the petitioner. In accordance with such recommendations and exercising its power as Disciplinary Authority, the Government has passed the order against the petitioner withholding all his pension and DCRG considering the huge loss caused to the State due to the misconduct of the petitioner. Further, it is contended that the Karnataka Administrative Tribunal after considering all the facts and legal aspects in this regard and by properly appreciating the materials on record, delivered a well reasoned judgment, which does not call for any interference by this court.

8. Now, we will discuss the points raised by the learned counsel for the petitioner with regard to the jurisdiction of Lokayuktha to investigate the matter and to report. It is an undisputed fact that the Government having come to a conclusion that the allegations made against the former Chief Minister and the Departmental Officers, working in the Mines Department with regard to their misconduct committed for the period from February 2004 to the end of October, 2004, it constituted a commission headed by Justice U.L. Bhat. It is also not disputed that the said Commission was disbanded on 12.3.2007 and the matter was referred for investigation to the Lokayuktha u/s. 7(2-A) of Karnataka Lokayuktha Act. In turn, the Lokayuktha has referred the matter to a committee of its own officers consisting of three members. The said reference was made in the month of April 2007. Subsequently, on 27.12.2007, three member committee gave a report to Lokayuktha. The Lokayuktha on the basis of such report, submitted a report u/s. 12(3) Karnataka Lokayukta Act along with its recommendations, recommending for initiation of the departmental enquiry against the petitioner.

9. Though the facts are not denied, however the learned counsel for the petitioner strenuously contended that it is the reference made to the Lokayuktha and the Lokayuktha alone ought to have conducted the investigation and there could not have been any further delegation of his duties to three member committee for investigation. Therefore, the said report by the committee to the Lokayuktha and in-turn the report submitted by the Lokayuktha are totally bad in law. These objections have been taken by the petitioner when he was called upon to submit his comments about the committee's report, in his comments dated 11.2.2008.

10. The reference was made by the Government in the month of April 2007, of course on that particular day, there was no provision for empowering Lokayuktha to refer the matter to a committee. Subsequently, the Karnataka Lokayuktha Act came to be amended bringing amendment to Section 15 of the Karnataka Lokayuktha Act with retrospective effect i.e., from 01.08.2006. The amended provisions of Section 15(1) to (3) are relevant provisions to be taken note of, which read as follows:

"15. Staff of Lokayukta, etc. -

[(1) There shall be such officers and employees as may be prescribed to assist the Lokayukta and the Upalokayutha or the Upalokayuktas in the discharge of their functions under this Act.]

(2) The categories, recruitment and conditions of service of the officers and employees referred in sub-section (1) including such special conditions as may be necessary for enabling them to act without fear in the discharge of their functions, shall be such as may be prescribed in consultation with the Lokayukta 1 [xxxjl.

(3) Without prejudice to the provisions of sub-section (1) the Lokayukta or an Upa-Lokayukta may for the purpose of conducting investigations under this Act utilize the services of,

[(a) any officer or investigating agency of the State Government; or

(aa) any officer or investigating agency of the Central Government with the prior concurrence of that Government; or]1

(b) [any person or any other agency.]"

Thus it is clear that the power of referring the matter for investigation or utilize the services of any person or any other agency by Lokayukta is deemed to have been in existence from 1.8.2006 itself. Therefore, whatever the references made or services utilized of any person or any other agency as from 1.8.2006 onwards, those acts of Lokayuktha or Upa-Lokayuktha are validated by way of amendment to the said provision. Therefore, it cannot be said that the Lokayuktha had no jurisdiction to refer the matter to the three member committee for investigation and report.

11. The learned counsel for the petitioner also un-successfully argued before us submitting that had the petitioner challenged the order of Reference of the Lokayuktha to the Three Member Committee in the year 2007 itself, such reference would have been invalidated or struck down by the courts and therefore, the petitioner has got right to challenge such order even after amendment to the said provision. Such argument in our opinion is not tenable because the legislature in it's wisdom has amended the said provision retrospectively from 1.8.2006 itself. When retrospective operation has been specifically given to a provision, the said law binds the citizens and they have to

follow the said piece of legislation unless the same is challenged before the competent court of law. For having not challenged the said provision or the reference of the matter by the Lokayuktha to a Three Member Committee at the appropriate stage, the petitioner has to blame himself for not having taken recourse of law at right point of time. By way of amendment such right has been taken away. Therefore, such argument in our opinion cannot be accepted.

11.1 Learned counsel for the petitioners further contended that the KCS (CCA) Rules, 1957 are referable to the Government Servants, who are in service; Action can be taken only against the serving Government Servants and not against the retired Government Servants. In this regard, the learned counsel drew our attention to the provisions of Rule 2(d) of KCS (CCA) Rules, 1957, which defines, Who is Government Servant". He also brought to our notice the provisions of Rules 8, 9, 11 and 14(A) of the said Rules, which also refer to the Government Servants. In this regard, he also relied upon the Ruling reported in , ILR 1962 (Mysore) Page 900 between S. Subba Rao v. The State of Mysore and contended that using of present tense in this Rule indicate that, " No Disciplinary Action can be taken against the retired Government Servants under the said provisions".

12. Per contra, the learned Additional Advocate General contended that, in view of introduction of Rule 214 to the KCS (CCA) Rules, 1967, the said argument of the learned counsel for the petitioners does not hold water.

13. We have carefully bestowed our anxious considerations to the said provisions and Rules quoted by the learned counsel for the petitioner and also the Ruling of this court in ILR 1962 (Mysore) 900 (Supra). Specifically Rule 2(d) of the KCS(CCA) Rules, 1967 reads thus-

"2(d) "Government Servant" means a person who is a member of the Civil Services of the State of Karnataka or who hold a civil post in connection with the affairs of the State of Karnataka and includes any person whose services are temporarily placed at the disposal of the Government of India, the Government of another State, a local authority, any person or persons whether incorporated or not and also any person in the service of the Central or another State Government or a local or other authority whose services are temporarily placed at the disposal of the Government of Karnataka."

On meaningful understanding of the said decision and the definition clause, it is crystal clear that, the Disciplinary Proceedings cannot be initiated and proceeded against the retired Government Servants under the said rules, as rightly contended by the learned counsel for the petitioner, in as much as in these rules, the present tense is used sofar as the Government Servants are concerned. Therefore, we have consider the provision under Rule 214 of the said Rules, to know as to whether the rule is applicable or not to the facts of this case.

14. The legislators in their wisdom have introduced Rule 214 to KCS (CCA) Rules, by way of substitution by notification in No. FD-36 SRS-90 dated 10.10.1990

with effect from 18.10.1990.

15. The Rules 214(2) (b), 214(6) (a) and 214(6)(b) of KCS (CCA) Rules are the relevant provisions which are necessary so far as this case is concerned which deals with the Departmental proceedings against a retired Government servant and for withholding or withdrawing pension for misconduct or negligence by the retired Government servant. For the purpose of meaningful understanding and discussion, we would like to extract the relevant portion of the said rules i.e., 214(1)(a) & (b), 214(2)(b) and (b), asunder:

"[214 [(1)(a) Withholding or withdrawing pension for misconduct or negligence.-- The Government reserve to themselves the right of either withholding or withdrawing a pension or part thereof whether permanently or for a specified period, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including the service under a foreign employer and the service rendered upon reemployment after retirement.

(b) Recovery of pecuniary loss from pension: The Government reserve to themselves the right of ordering recovery from a pension, the whole or part of any pecuniary loss caused to the Government or to a foreign employer under whom the Government servant has worked on deputation or otherwise. If in any departmental or judicial proceedings, the pensioner is found guilty of grave negligence during the period of his service, including the service rendered upon reemployment after retirement:

2. (b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his reemployment.

(i) shall not be instituted save with the sanction of the Government.

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service."

The above said provisions disclose that, the provisions have been very much in existence as on the date of retirement of the petitioner herein. The said provisions have been in vogue since 18.10.1990. Rule 214(1)(a) and (b) recognizes the withholding of pension or withdrawing the pension or recovery of the pension if any disciplinary proceedings or judicial proceedings are initiated during the period when the Government servant was in service. Sub provisions (2)(b)(i) to (iii) of Rule 214 refer to the departmental proceedings so far they relate to a retired Government servants are concerned. Rule (2)(b) specifically indicates that the departmental proceedings if not instituted while the

Government servant was in service, the same shall be conducted by such authority and in such place as the Government may direct. It clearly empowers the Disciplinary Authority or Government to institute such disciplinary proceedings with the sanction of the Government, and it shall not be instituted in respect of any event which took place more than four years before such institution. Sub Rule (iii) contemplates that such proceedings shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service. That means, the Disciplinary Authority itself can conduct the enquiry or by such an authority as the Government or the authority may direct and such enquiry shall be conducted in accordance with the procedure applicable to the Government servants as if the Government servant was in service i.e., to say Rule 11 and 11(a) and 14(a) of KCS (CCA) Rules so far as the procedural aspects are concerned.

16. There is no dispute so far as it relates to Rule 214(2)(b)(ii) of the CCS Rules are concerned, because the proceedings in this matter are initiated with reference to the event that has taken place within four years from the date of initiation of the departmental proceedings. So also Rule 214(6) is not violated.

17. Rule 214 of the KCS Rules also empowers the Disciplinary Authority or the Government to conduct the enquiry by itself or through such authority as it deems fit and proper and direct such authority to conduct the enquiry. Therefore, looking at the said Rule it is crystal clear that, in order to cover the deficiency in Rule 11 of the said Rules and to take action against the wrongful acts of the persons, who mis-conducted themselves and caused loss to the State exchequer, Rule 214 of the Rules has been introduced in the year 1990. Therefore, it cannot be said that only Rule 11 is applicable to this particular case in as much as Rule 214(2)(a) and (b), specifically deals with the retired Government servant.

18. The learned counsel for the Petitioner submitted that even if Rule 214(2)(b) states that the Government can take action against the retired employees, and it specifically imposes responsibility on the Government to deal with the retired Government servant, it cannot delegate its power to any other person or authority. Further, he submitted that, even if the Government refers the matter to any other person or authority invoking the provision u/s. 214(2)(b)(iii), in turn, it should follow Rule 11(1) to (5) and thereafter only it can refer the matter to any other authority; that the authority to which the Departmental Enquiry was transferred has no jurisdiction to frame charges and then proceed with the matter; that it is the fundamental duty of the Disciplinary Authority to frame charges and receive the statement of objections from the delinquent employee and thereafter if it is satisfied, an enquiry has to be proceeded with, only then the State Government can refer the matter to the other authority. It is further argued that, in this particular case, the Disciplinary Authority has not framed the charges or supplied the articles of charges to the delinquent employee and not

taken the written statement before referring the matter to Lokayuktha for enquiry. Therefore, the entire procedure followed by the Disciplinary Authority and subsequently by inquiry officer is vitiated by serious incurable procedural defect and it vitiates the entire proceedings. Hence, on that ground also, the order passed by the Government has to be set aside.

19. Section 214(2)(b)(iii) empowers the Disciplinary Authority or the Government, to conduct enquiry through such authority and in such place as the Government may direct, in accordance with the procedure applicable. This clearly indicates that the Government can conduct enquiry through any other authority, but the other authority should follow the procedure applicable to departmental Inquiries. Therefore, it goes without saying that Rule 11 and 14A of CCA Rules are virtually mutatis mutandis applicable for the purpose of conducting Departmental Inquiry.

20. Before advertng to Rule 11 of the CCA Rules, it is just and necessary to bear in mind Rule 14A of the CCA Rules, which explains the procedure for enquiry when the matter is referred to Lokayuktha. It is not in dispute that the matter was referred to Lokayuktha by the Government after receiving the investigation report from the Lokayuktha u/s. 12(3) of Karnataka Lokayukta Act. Section 12(4) of the Karnataka Lokayukta Act reads as follows:

"Section 12(4) - Report of Upalokayukta - Action on basis of - Competent Authority to intimate Upalokayukta within three months from date of receipt of report, action taken or proposed to be taken on basis of report".

On receipt of the report under section 12(3) of Karnataka Lokayukta Act, the Government shall examine the report forwarded to it and intimate the action taken or proposed to be taken on the basis of the report. In this case, after receipt of the investigation report of the Lokayuktha with recommendations that the Disciplinary action has to be taken against the petitioner, the Government has entrusted the matter to Lokayuktha to conduct Disciplinary Inquiry. As mentioned supra, the State Government after examining, should take action on the basis of such report. Therefore, the Government in its wisdom instead of making the Inquiry itself has referred the matter to Lokayuktha. There is no legal impediment in doing so.

21. Section 14A(1) of the CCA Rules reads as follows:

"14.A. Procedure in cases entrusted to the Lokayukta: (1) The provisions of sub-rule (2) shall, notwithstanding anything contained in rule 9 to 11A and 13, be applicable for purposes of proceeding against Government Servants whose alleged misconduct has been investigated into by the Lokayukta or Upalokayukta either under the provisions of the Karnataka Lokayukta Act, 1984 or on a reference from Government.

Xxxxx xxxx xxxxxxxxxxxxxx

2. (c) The Lokayukta, the Upalokayukta or the Officer authorised under clause

(b) to conduct an inquiry shall conduct it in accordance with the provisions of rule 11 in so far as they are not inconsistent with the provisions of this rule and for that purpose shall have the powers of the Disciplinary Authority referred to in the said Rule."

This particular provision discloses that, where the cases entrusted to Lokayuktha, the provisions of sub-Rule (2) has to be applied notwithstanding anything contained in Rule 9 to 11A and 13 of the rules for the purpose of proceeding against the Government servant whose alleged misconduct has been investigated by the Lokayuktha. This provision has to be read along with Rule 214 of CCA Rules, which says that the procedure as contemplated to hold disciplinary enquiry against the Government servant has to be adopted. Sub Rule (2)(c) of Rule 14A contemplates that Lokayuktha, Upa Lokayuktha or the Officer authorized under clause (b) to conduct enquiry shall conduct it in accordance with the provisions of Rule 11 insofar as they are not inconsistent with the provisions of this Rule. Therefore, it goes without saying by combined reading of the Rule 14A(1) and 14A(2) of the CCA Rules, that the Lokayuktha can entrust matter to any of its officers to conduct the Inquiry, notwithstanding anything contained in Rules 9 to 11A and 13, but in strict compliance with Rule 11 which are not inconsistent with the provisions of these Rules. Specifically it empowers Lokayuktha to conduct enquiry as if it is a Disciplinary Authority. It may be noted that the wordings used in Rule 14A(2)(c) of the CCA Rules, with reference to the powers of the Disciplinary Authority, shall be understood that the Lokayuktha or the Upa Lokayuktha have got full powers of the Disciplinary Authority, during the Inquiry. Therefore, when once the entrustment is made, whatever the powers that can be exercised by the Disciplinary Authority will be exercised by the Lokayuktha or the upa Lokayuktha or the officer authorized, till the completion of the enquiry and recommendations are made to the Government. It should also be borne in mind that the wordings "Inquiring Authority" is not used in the said provision, but the word "Disciplinary Authority" is specifically used, which has got its own significance. In this background, Rule 11 has to be understood. Rule 11(1) to (23) of the Rules deals with enquiry that has to be conducted by the Disciplinary Authority or other authority to which the entrustment was made to conduct disciplinary enquiry.

22. The learned counsel for the petitioner relied upon Rule 11(1) to (6) which are extracted below:

"11. Procedure for imposing major penalties.--

(1) No order imposing any of the penalties specified in clauses (v) to (viii) of rule 8 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 11A.

(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviours against a Government servant, it may itself inquire into, or appoint under this

rule an authority to inquire into the truth thereof 1 Explanation.--Where the Disciplinary Authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22), to the Inquiring Authority shall be construed as a reference to the Disciplinary Authority.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 11A, the Disciplinary Authority shall draw up or cause to be drawn up.--

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misconduct in support of each article of charge, which shall contain,-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The Disciplinary Authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence the Disciplinary Authority may itself inquire into such of the articles of charge as are not admitted or, if it considers it necessary so to do, appoint, under sub-rule (2), an Inquiring Authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the Disciplinary Authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in rule 11A.

(b) If no written statement of defence is submitted by the Government servant, the Disciplinary Authority may itself inquire into the articles of charge or may, if it considers it necessary to do so, appoint, under sub-rule (2) an inquiring Authority for the purpose.

(c) Where the Disciplinary Authority itself inquires into any articles of charge or appoints an Inquiring Authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(6) The Disciplinary Authority shall, where it is not the Inquiring Authority, forward to the Inquiring Authority.

- (i) a copy of the articles of charge and the statement of imputations of misconduct or misbehaviour;
- (ii) a copy of the written statement of defence, if any, submitted by the Government servant;
- (iii) a copy of the statements of witnesses, if any, referred to in sub-rule (3);
- (iv) evidence proving the delivery of the documents referred to in sub-rule (3) to the Government servant; and
- (v) a copy of the order appointing the "Presenting Officer".

23. It is also contended by the petitioners advocate that it is the fundamental duty of the Disciplinary Authority where it proposes to conduct enquiry against the Government servant, to draw or cause to be drawn the substance of imputation of misconduct and the statement of imputation of misconduct in support of the articles of charge and the same shall be delivered to the Government servant, requiring his explanation for such articles of charge and statement of imputations and only on receipt of the written statement of the defence, if the authority may itself enquire into such articles of charge or it can entrust the matter into any other authority for the purpose of conducting Departmental Enquiry; that if no written statement is filed, then also it can proceed with the enquiry or appoint an enquiring authority for that purpose.

24. Rule 6 says that the Disciplinary Authority if it is not enquiring, it shall forward the copy of the articles of charge, statement of imputation and the written statement to the enquiring authority for the purpose of conducting the enquiry.

25. The learned counsel for the petitioner further submitted that Rule 11(1) to (6) of the CCA Rules has to be strictly followed by the Disciplinary Authority and that fundamental basic duty cannot be entrusted to the enquiring authority.

26. However house of these submissions deserve to be accepted. Of course, Rule 11(1) to (6) of the CCA Rules imposes responsibility on the Disciplinary Authority if Disciplinary Authority and enquiring authority are different. However, as already referred, the provisions of Rule 14(A) (a special provision) of the Rules, Specify that notwithstanding anything contained in Rules-9 to 11A & 13, Rule 14(A) would be applicable for the purpose of proceeding against Government servant whose alleged misconduct has been investigated into by the Lokayuktha or Upa Lokayuktha either under the provisions of the Karnataka Lokayukta Act or Reference from the Government. Further, reading the sub clause (2)(c) of 14A of the Rules, would clarify that all the powers vested with the Disciplinary Authority, can also be exercised by the Lokayuktha while dealing with the matter conducting the disciplinary enquiry against the delinquent employee. Therefore, there is no confusion at all regarding the powers of Lokayuktha or Upa-Lokayuktha even when they themselves have investigated the matter with regard to the misconduct of the petitioner. If Rule 11(6) of the Rules, and Rule

14(A) are read jointly and homogeneity what emerges is, even if the written statement of the delinquent is not considered by the Disciplinary Authority and no articles of charges and statement of imputations were framed by the Disciplinary Authority, the Lokayuktha can perform such acts while dealing with the departmental enquiry of a delinquent employee. In view of harmonious reading of Rule 11 and 14A of the CCA Rules as noted above, in our opinion, the Inquiry Officer who is entrusted with the work by the Lokayuktha or the Upa Lokayuktha can definitely frame articles of charges and statement of imputations against the delinquent employee and proceed further to enquire into the matter.

27. At the cost of repetition, we re-iterate that all the powers of the Disciplinary Authority are fully vested with the Enquiring Authority u/s. 14A(2)(c) of the said Rules for the purposes of enquiry. It is virtually the special procedure to be adopted by the Lokayuktha with reference to the delinquent employee. In view of the same, we do not find any strong reason to quash the disciplinary enquiry conducted by the Additional Registrar of Lokayuktha, in as much as the same is not vitiated by any serious incurable defect.

28. The legislature with all care, knowing fully well the relevant provisions in other enactments have framed Rule 11 and 14A of the KCS (CCA) Rules, so as to avoid any unscrupulous person in the Government department by means of raising such technicalities to escape from their liability where they have misconducted, during the course of their employment with the Government. To avoid such eventuality, the above said provisions have to be read harmoniously with each other.

29. Last, but not least, the learned counsel for the petitioner has further submitted that on facts also, there is absolutely no ground to proceed against the Petitioner. It is further submitted that though the Petitioner has allegedly given transport permits to persons who have no mining licence or permit, but those transport permits were given to transport the minerals from patta lands; the pattadars need not have to obtain any permit for the purpose of mining in their lands. Thus according to the petitioner he has not committed any violation of Section 4 of Mines and Minerals (Development and Regulation) Act ["MMRD Act" for short].

30. In this regard, the learned counsel for the petitioner relied upon a ruling reported in , (2013) 9 SCC 725 between Thressiamma Jacob and Others v. Geologist, Department of Mining and Geology and others, wherein the Hon"ble Apex Court at paragraph (3) has raised a question as to - Whether the owners of jenmom lands in the Malabar area are the proprietors of the soil and the minerals underneath the soil - the Apex Court has answered the said question The Hon"ble Apex Court has observed at paragraph 55 that -

"55. Mines and Minerals Act is an enactment made by Parliament to regulate mining activities in the country. The said Act does not in anyway purport to declare the proprietary rights of the State in the mineral wealth nor does it

contain any provision divesting any owner of a mine of his proprietary rights. On the other hand, various enactments made by the Parliament, such as the Coking Coal Mines (Nationalisation) Act, 1972 and the Coal Bearing Areas (Acquisition and Development) Act, 1957 make express declarations under sections 4 and 7 of the Act providing for acquisition of the mines and rights in or over the land from which coal is obtainable."

The Hon"ble Apex Court in the aforesaid judgment has further observed at paragraph 58 that -

"There is nothing in the law which declares that all mineral wealth/subsoil rights vest in the State, on the other hand, the ownership of subsoil/mineral wealth should normally follow the ownership of the land, unless the owner of the land deprived of the same by some valid process."

31. Hon"ble apex court has considered in the above said ruling regarding the ownership of the minerals underneath the sub soil of a patta land which belongs to the owner of the land. But the Apex court had no occasion in the said matter to consider the question as to whether any transport permit can be granted without a licence for mining and for transporting the minerals.

32. In this background, we have to consider Section 4 of the MMRD Act, 1957, which reads as follows:

"Prospecting or mining operations to be under licence or lease -

(1) [No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder];"

The above said provision clearly indicates that no person shall undertake any mining operation in any area except in accordance with the terms and conditions of permit or the prospecting licence. Section 4(1) (A) of the MMRD Act, deals with transport of the minerals. It says that no person shall transport the same otherwise than in accordance with the provisions of the Act and Rules.

33. Section 10 of the said MMRD Act, refers to an application for prospecting licences or mining leases. Merely because the person is the owner of the property, the Pattadar cannot transport the minerals without obtaining the licence for mining and transporting the minerals.

34. Added to that, as could be seen from the reference made to the Lokayuktha for investigation and report, the Government has also specifically referred the matter requesting the Lokayuktha to give its report with reference to -

"Whether mining and transportation of the minerals from the patta lands without valid mining lease are valid ?."

35. The Lokayuktha has in fact, in its investigation report, has observed that no such transport permits can be issued without there being a mining licence or lease. Therefore, it goes without saying that the pattedars can not transport the minerals without informing the department or taking any licence for mining.

36. We find that the Government after considering the Disciplinary Authority report, reexamined the contentions of the Petitioner accepted the report of the Lokayuktha and imposed punishment on the petitioner. The factual aspects and legal aspects are fully considered by different authorities as per Law. Therefore, we are of the opinion that there is no mistake or illegality committed by the authorities noted above.

37. The learned petitioner's counsel has also drawn our attention that the Government has rejected the report submitted by the Lokayuktha with reference to the allegations made against the Chief Minister; as the report was rejected, the same cannot be made as basis for conducting the Departmental Enquiry against the petitioner. We can not accept such submission. Merely because the Chief Minister is absolved, it does not mean that the person who was empowered with authority to issue transport permits, if is found guilty, can escape from the clutches of law. It should be borne in mind that when an officer is vested with a power or authority to do certain acts, he is responsible and answerable to those acts particularly, when such acts need not be in law ratified or approved by higher-ups. In this case, merely because, the officer has exercised such statutory authority after taking approval or after bringing it to the notice of the superior official or even the Chief Minister, it will not absolve him from his responsibility, because he is the statutory authority to issue such transport permits. The law recognizes him as a statutory authority to pass such order or to do such acts. Therefore, we do not find any reason to accept the said contention of the learned counsel.

38. After verifying and considering the records of investigation done by the Lokayuktha prior to the initiation of the Departmental Enquiry against the petitioner, the Government entrusted the matter to the Lokayuktha once again for conducting Departmental Enquiry. The disciplinary authority based records on has framed Articles of Charges and Statement of Imputations. After providing sufficient opportunity for the purpose of leading evidence and after conducting thorough enquiry in respect of the allegations made against the petitioner, the Lokayukta has held the petitioner guilty. The Karnataka Appellate Tribunal has also re-appreciated such acts of Lokayukta and the Disciplinary Authority once again, and has found changes as proved. Since, all the above statutory authorities who are entrusted with the matter, have considered and appreciated all the facts on record before finding the petitioner guilty, the findings, while exercising the power under writ jurisdiction, would not ordinarily be disturbed. Due respect should be given, if all the materials facts are properly analyzed.

39. The learned counsel has not brought to our notice any of the facts which are erroneously appreciated by the Inquiring Officer or has extraneously considered

any of the facts which are not found on record or that, on imaginary grounds, he has given his report. When such allegations are not found against the Inquiring Officer or the disciplinary authority, this court will not interfere on facts with such an order. At four stages, facts regarding the misconduct of the petitioner have been discussed and thereafter he was held guilty. We are of the clear conclusion that the petitioner has not made out any ground to interfere with the order passed by the Karnataka Appellate Tribunal.

The Writ Petition fails and accordingly dismissed.