

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU****DATED THIS THE 10TH DAY OF MARCH, 2023****BEFORE****THE HON'BLE MR JUSTICE M.NAGAPRASANNA****WRIT PETITION NO. 504 OF 2023 (GM-RES)****BETWEEN:**

DR.DAKSHAYINI K.,
W/O VISHWANATH M.S.,
AGED ABOUT 46 YEARS
WORKING AS LAND ACQUISITION OFFICER
BANGALORE DEVELOPMENT AUTHORITY
KUMARA PARK WEST
BENGALURU – 560 020.

...PETITIONER

(BY SRI. SATISH K., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
DEPARTMENT OF PERSONNEL AND
ADMINISTRATIVE REFORMS
REPRESENTED BY ITS
PRINCIPAL SECRETARY
VIDHANA SOUDHA
BENGALURU – 560 001.
2. THE ADDITIONAL DIRECTOR
GENERAL OF POLICE
KARNATAKA LOKAYUKTHA POLICE
M.S. BUILDING, BENGALURU – 560 001.

...RESPONDENTS

(BY SRI.B.V.KRISHNA, AGA FOR R1;
SRI B.B.PATIL, ADVOCATE FOR R2)





THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS FROM THE R1 IN RESPECT OF THE IMPUGNED ORDER DATED 04.1.2023 (ANNEXURE J); QUASH THE IMPUGNED ORDER DATED 04.01.2023 BEARING NO. CIAASUE 23 KEV 2019 ISSUED BY R1 (ANNEXURE- J) AND ALL FURTHER PROCEEDINGS PURSUANT THERETO AND ETC.,

THIS WRIT PETITION, COMING ON FOR DICTATING ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question an order dated 04.01.2023, passed by respondent No.1 – the Department of Personnel and Administrative Reforms, whereby, an approval is granted as required under Section 17A of the Prevention of Corruption Act, 1988, for conduct of proceedings against the petitioner.

2. Heard Sri Satish K., learned counsel for petitioner and Sri B.V.Krishna, learned Additional Government Advocate for respondent No.1 and Sri B.B.Patil, learned counsel for respondent No.2.

3. Learned counsel for the petitioner submits and the learned counsel for the respondents admit that the issue in the *lis* stands covered by the order dated 26.03.2021, passed by this Court in W.P.No.200356/2021, wherein, this Court



considered an identical issue, the issue of application of mind by the competent authorities, when considering granting approval under Section 17A of the Prevention of Corruption Act, 1988.

4. This Court in W.P.No.200356/2021 disposed on 26.03.2021, has held as follows:

"13. The amendment dated 26.07.2018 introduced several changes to the Prevention of Corruption Act, 1988. One such amendment was introducing Section 17A with an object of giving protection to public servants who have done or ordered or approved certain actions as public servants in the bonafide discharge of their official functions without any dishonesty or malafide intentions. The amendment in the form of this new Section was necessitated owing to certain unfortunate circumstances where even honest officers were prosecuted under the Prevention of Corruption Act. 14. Since the marrow of the lis lies in consideration and interpretation of the newly introduced Section 17A of the Prevention of Corruption Act, 1988 which was brought into force on 26.07.2018, Section 17A is extracted for the purpose of quick reference:

"17-A. Enquiry or inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.—(1) No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval –



(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month."

In terms of the above extracted provision of law introduced by an amendment, no Police Officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under the Prevention of Corruption Act, where the alleged offence is relatable to any recommendation made or decisions taken by such public servant in discharge of his official functions or duties without the previous approval of the officer or authority concerned.

15. Clause (a) thereof provides that in case of public servant who is or was employed in connection with the affairs of the Union at the time when the offence alleged to have been committed, the previous approval of the Central Government shall be obtained. Clause (b) likewise provides that in case of a public servant who is or was an employee in connection with the affairs of the



State at the time when the offence was alleged to have been committed, the approval of the State Government shall be obtained before proceeding. Clause (c) provides that in case of any other person who comes within the definition of public servant previous approval of the competent authority to remove him from office at the time when the offence alleged to have been committed should be obtained. The narrative hereinabove cannot but indicate that the object of the Section was to protect public servants from malicious, vexatious or baseless prosecution. However, if enquiry into the circumstances in which the alleged administrative or official act was done by the public servant or where malfeasance committed by the public servant which would involve an element of dishonesty or impropriety is to be proceeded against, the approval of the competent authority is required.

16. In my considered view Section 17A and its purport must be observed with complete strictness bearing in mind public interest and protection available to such officers against whom offences are alleged, failing which many a time it would result in a malicious prosecution. Section 17A is clearly a filter that the prosecution must pass in order to discourage or avoid vexatious prosecution, though cannot be considered as a protective shield for the guilty, but a safeguard for the innocent.

17. The provision (supra) was also considered by the Apex Court in the case of YESHWANTH SINHA v. CENTRAL BUREAU OF INVESTIGATION reported in (2020) 2 SCC 338. The Apex Court though did not consider as to how the previous approval of the competent authority has to be taken, but considered the amendment and its importance in the following paragraphs:

"117. In terms of Section 17-A, no police officer is permitted to conduct any enquiry or inquiry or conduct investigation into any offence done by a public servant where the offence alleged is relatable to any recommendation made or decision taken by the public servant in discharge of his public functions without previous approval, inter alia, of



the authority competent to remove the public servant from his office at the time when the offence was alleged to have been committed. In respect of the public servant, who is involved in this case, it is clause (c), which is applicable. Unless, therefore, there is previous approval, there could be neither inquiry or enquiry or investigation. It is in this context apposite to notice that the complaint, which has been filed by the petitioners in Writ Petition (Criminal) No. 298 of 2018, moved before the first respondent CBI, is done after Section 17-A was inserted. The complaint is dated 4.10.2018. Para 5 sets out the relief which is sought in the complaint which is to register an FIR under various provisions. Paras 6 and 7 of the complaint are relevant in the context of Section 17-A, which read as follows:

"6. We are also aware that recently, Section 17-A of the Act has been brought in by way of an amendment to introduce the requirement of prior permission of the Government for investigation or inquiry under the Prevention of Corruption Act.

7. We are also aware that this will place you in the peculiar situation, of having to ask the accused himself, for permission to investigate a case against him. We realise that your hands are tied in this matter, but we request you to at least take the first step, of seeking permission of the government under Section 17- A of the prevention of corruption Act for investigating this offence and under which, "the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month."

(Emphasis supplied)

118. Therefore, the petitioners have filed the complaint fully knowing that Section 17-A



constituted a bar to any inquiry or enquiry or investigation unless there was previous approval. In fact, a request is made to at least take the first step of seeking permission under Section 17-A of the 2018 Act. Writ Petition (Criminal) No. 298 of 2018 was filed on 24.10.2018 and the complaint is based on non-registration of the FIR. There is no challenge to Section 17-A. Under the law, as it stood, both on the date of filing the petition and even as of today, Section 17-A continues to be on the statute book and it constitutes a bar to any inquiry or enquiry or investigation. The petitioners themselves, in the complaint, request to seek approval in terms of Section 17-A but when it comes to the relief sought in the writ petition, there was no relief claimed in this behalf.

119. Even proceeding on the basis that on petitioners' complaint, an FIR must be registered as it purports to disclose cognizable offences and the Court must so direct, will it not be a futile exercise having regard to Section 17-A. I am, therefore, of the view that though otherwise the petitioners in Writ Petition (Criminal) No. 298 of 2018 may have made out a case, having regard to the law actually laid down in Lalita Kumari [Lalita kumari v. State of U.P., (2014) 2 SCC 1: (2014) 1 SCC (Cri) 524], and more importantly, Section 17-A of the Prevention of Corruption Act, in a review petition, the petitioners cannot succeed. However, it is my view that the judgment sought to be reviewed, would not stand in the way of the first respondent in Writ Petition (Criminal) No.298 of 2018 from taking action on Ext. petition-1, complaint in accordance with law and subject to first respondent obtaining previous approval under Section 17-A of the prevention of Corruption Act."

The Apex Court has considered the importance of previous approval of the competent authority in the afore-extracted judgment.

18. Section 17A casts an obligation of application of mind on the part of the Competent Authority in three



situations. The Section makes it clear that no officer shall conduct any enquiry or inquiry or investigation without previous approval. Therefore, the approving authority will have to look into the materials, apply its mind in all the three contingencies i.e., enquiry or inquiry or investigation. Though, enquiry and inquiry are often used interchangeably, there exists a difference between the two. Etymologically, the source of both enquiry and inquiry could be the same as 'en' is derived from French and 'in' is from Latin. Inquiry has a formal and official ring to it. Enquiry is informal and can be unofficial. Enquiry could even mean, to question; Inquiry is a formal investigation; investigation is a search. Therefore, the act casts an obligation of application of mind upon the authority to consider whether approval is sought for an enquiry, inquiry or an investigation. It becomes imperative for the authority to apply its mind to what is brought before it, as application of mind is the bedrock of any order that an authority passes, failing which, it would be contrary to the principles of natural justice, as non-application of mind is in itself violative of principles of natural justice.

19. Application of mind by an authority is demonstrable only in the order that the authority makes, for the order to demonstrate application of mind by the authority, it must contain the reasons, as recording of reasons in an order is the only way that one can construe such application of mind. Reasons are live links between the mind of the decision-taker, to the controversy in question and the decision arrived at. Reason and application of mind are impregnable for an order to sustain the scrutiny of law, be it administrative or quasi judicial. Reasons in every circumstance need not be elaborate, but nevertheless should bear application of mind. The case at hand and the order impugned will have to be tested on the anvil of the mandate of the statute, the intent behind its enactment and the rule of application of mind.

20. The afore-narrated facts and events are not in dispute. Government of Karnataka had issued a general circular through the Department of Personnel and Administrative Reforms directing all departments that they should not indiscriminately refer cases in the first



instance to the ACB where allegations are made against the officials. Specific directions were given in the general circular to the departments for internal scrutiny of allegations and take necessary permission from the competent authority in the event reference to ACB is necessitated. The circular dated 24.08.2016 was issued by Government even before the amendment to the Prevention of Corruption Act introducing section 17A came about. The circular dated 24.08.2018 reads as follows:

“ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ಸಂಖ್ಯೆ:ಸಿಆಸುಇ/217/ಸೇಲೋಯು/2016

ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸಚಿವಾಲಯ,
ಬಹುಮಹಡಿಗಳ ಕಟ್ಟಡ,
ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 24.08.2016.

ಸುತ್ತೋಲೆ

ವಿಷಯ: ಭ್ರಷ್ಟಾಚಾರ ನಿಗ್ರಹ ದಳಕ್ಕೆ ತನಿಖೆಗಾಗಿ ಪ್ರಕರಣಗಳನ್ನು
ವಹಿಸುವ ಸಂದರ್ಭದಲ್ಲಿ ಸರ್ಕಾರದ ಇಲಾಖೆಗಳು
ಅನುಸರಿಸಬೇಕಾದ ಕ್ರಮಗಳ ಕುರಿತು.

ಉಲ್ಲೇಖ: ಸರ್ಕಾರದ ಆದೇಶ ಸಂಖ್ಯೆ:ಸಿಆಸುಇ/14/ಸೇಲೋಯು/
2016, ದಿನಾಂಕ: 14.03.2016.

ಸರ್ಕಾರದ ಆದೇಶ ಸಂಖ್ಯೆ:ಸಿಆಸುಇ/14/ಸೇಲೋಯು/2016, ದಿನಾಂಕ:
14.03.2016ರನ್ವಯ ರಾಜ್ಯದಲ್ಲಿ ಭ್ರಷ್ಟಾಚಾರ ತಡೆ ಅಧಿನಿಯಮ, 1988ನ್ನು
ಪರಿಣಾಮಕಾರಿಯಾಗಿ ಜಾರಿಗೆ ತರಲು ಹಾಗೂ ಪ್ರಕರಣಗಳನ್ನು ಸ್ವತಂತ್ರವಾಗಿ ತನಿಖೆ
ನಡೆಸಲು ಒಂದು ಪ್ರತ್ಯೇಕ ಭ್ರಷ್ಟಾಚಾರ ನಿಗ್ರಹ ದಳವನ್ನು ಸೃಜಿಸಲಾಗಿದೆ.

2. ಸರ್ಕಾರದ ಕೆಲವು ಇಲಾಖೆಗಳು ತಮ್ಮ ಇಲಾಖೆಗಳಲ್ಲಿ ಕಾರ್ಯನಿರ್ವಹಿಸುತ್ತಿರುವ
ಸಿಬ್ಬಂದಿ/ಅಧಿಕಾರಿಗಳ ವಿರುದ್ಧದ ಪ್ರಕರಣಗಳನ್ನು ತಮ್ಮ ಹಂತದಲ್ಲಿ ಯಾವುದೇ ಆಂತರಿಕ
ಪರಿಶೀಲನೆ ಮಾಡದೇ ಹಾಗೂ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರಗಳ ಅನುಮೋದನೆ ಪಡೆಯದೇ
ನೇರವಾಗಿ ಭ್ರಷ್ಟಾಚಾರ ನಿಗ್ರಹ ದಳಕ್ಕೆ ತನಿಖೆಗಾಗಿ ವಹಿಸುತ್ತಿರುವುದು ಸರ್ಕಾರದ ಗಮನಕ್ಕೆ
ಬಂದಿದೆ.

3. ಆದುದರಿಂದ, ಇನ್ನು ಮುಂದೆ, ಸರ್ಕಾರದ ಇಲಾಖೆಗಳು ತಮ್ಮ ಇಲಾಖೆಗಳಲ್ಲಿ
ಕಾರ್ಯನಿರ್ವಹಿಸುತ್ತಿರುವ ಸಿಬ್ಬಂದಿ/ ಅಧಿಕಾರಿಗಳ ವಿರುದ್ಧದ ಪ್ರಕರಣಗಳನ್ನು ಭ್ರಷ್ಟಾಚಾರ
ನಿಗ್ರಹ ದಳಕ್ಕೆ ತನಿಖೆಗಾಗಿ ವಹಿಸುವ ಮುನ್ನ ತಮ್ಮ ಹಂತದಲ್ಲಿ ಆಂತರಿಕ ಪರಿಶೀಲನೆ
(Internal Scrutiny) ಮಾಡಿ ಸಂಬಂಧಪಟ್ಟ ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರಿಗಳ
(Competent Authorities) ಅನುಮೋದನೆ ಪಡೆದ ನಂತರವೇ ಪ್ರಕರಣಗಳನ್ನು
ಭ್ರಷ್ಟಾಚಾರ ನಿಗ್ರಹ ತನಿಖೆಗೆ ವಹಿಸತಕ್ಕದ್ದೆಂದು ತಿಳಿಸಲಾಗಿದೆ.



(ಸರ್ಕಾರದ ಮುಖ್ಯ ಕಾರ್ಯದರ್ಶಿಯವರ ಸೂಚನೆ ಮೇರೆಗೆ)

ಸಹಿ/-
(ಪಲ್ಲವಿ ಆಕುರತಿ)
ಸರ್ಕಾರದ ಉಪ ಕಾರ್ಯದರ್ಶಿ,

ಸಿಬ್ಬಂದಿ ಮತ್ತು ಆಡಳಿತ ಸುಧಾರಣೆ
ಇಲಾಖೆ,
(ಜಾಗೃತ ವಿಭಾಗ)

ಗೆ,

ಸಂಕಲನಾಧಿಕಾರಿಗಳು, ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ ವಿಭಾಗ, ಬೆಂಗಳೂರು-ಮುಂದಿನ
ಸಂಚಿಕೆಯಲ್ಲಿ ಪ್ರಕಟಿಸಲು ಹಾಗೂ 200 ಪ್ರತಿಗಳನ್ನು ಒದಗಿಸಲು (ಮುಖ
ಪತ್ರದೊಂದಿಗೆ)."

The case of the petitioners ought to have been at least considered in terms of the Circular.

21. The complainant-Smt. M.H. Vijayalakshmi lodges three complaints simultaneously to three different authorities viz., first one to the 1st respondent-Government; the second one to the Karnataka Lokayukta and the third one to the ACB. On receipt of the complaint, the Lokayukta takes the inquiry and submits its report on 21.06.2019 holding that the allegations made by Smt.Vijayalakshmi against the petitioners are unsubstantiated, general in nature and without any documentary proof. This report is during the pendency of the other two complaints - one before the Government and the other before the ACB.

22. On the complaint pending before the Government, the Hon'ble Chief Minister issues a general direction on 07.09.2019 to conduct a state-wide enquiry into the irregularities in the implementation of Krishi Bhagya Scheme between the years 2014 and 2018. The complainant, feeling victorious after the State-wide enquiry that was ordered by the Hon'ble Chief Minister, communicates a letter to the competent authority seeking withdrawal of the complaint that was given to the ACB. The withdrawal of the complaint reads as follows:

"ರವರಿಗೆ,



ಮಾನ್ಯ ಆಯುಕ್ತರು,
ಕೃಷಿ ಇಲಾಖೆ,
ಬೆಂಗಳೂರು.

ಮಾನ್ಯರೇ,

ವಿಷಯ: 2016-17ರಿಂದ 2018-19ನೇ ಸಾಲಿನ ವರೆಗೆ ಕೃಷಿ ಭಾಗ್ಯ ಯೋಜನೆ
ಯಡಿಯಲ್ಲಿನ ಎಲ್ಲಾ ಘಟಕಗಳ ಅಡಿಯಲ್ಲಿ ಸರ್ಕಾರದ ನೂರಾರು ಕೋಟಿ
ಸಬ್ಸಿಡಿ ಹಣ ಲಪಟಾಯಿಸಿರುವ ಅವ್ಯವಹಾರದ ದೂರು ಅರ್ಜಿ
ಹಿಂಪಡೆಯುತ್ತಿರುವ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖ: ನನ್ನ ದೂರು ಅರ್ಜಿಗಳ ದಿನಾಂಕ: 01/06/2019.

ಈ ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ತಮ್ಮಲ್ಲಿ ಕೋರುವುದೇನೆಂದರೆ ನಾನು
ಶ್ರೀಮತಿ ಎಂ.ಹೆಚ್.ವಿಜಯಲಕ್ಷ್ಮಿ, ಪ್ಲಾಟ್ ನಂ.33ಇಸ್.ಬಿ.ಎ. ಕಾಲೋನಿ, ಹಳೇ ಜೇವರ್ಗಿ
ರಸ್ತೆ, ಕಲಬುರಗಿ ಇದ್ದು, ದಿನಾಂಕ: 01/06/2019ರಂದು ಕೃಷಿ ಇಲಾಖೆಯ ಕೃಷಿ ಭಾಗ್ಯ
ಯೋಜನೆಯಡಿಯಲ್ಲಿನ ಎಲ್ಲಾ ಘಟಕಗಳ ಅಡಿಯಲ್ಲಿ ಸರ್ಕಾರದ ನೂರಾರು ಕೋಟಿ ಸಬ್ಸಿಡಿ
ಹಣ ಲಪಟಾಯಿಸಿರುವ ಅವ್ಯವಹಾರದ ತನಿಖೆ ನಡೆಸಲು ಕೋರಿ ದೂರು ಅರ್ಜಿಗಳನ್ನು
ಸಲ್ಲಿಸಿದೆ.

ಸದರಿ ನಾನು ಸಲ್ಲಿಸಿದ ದೂರು ಅರ್ಜಿಗಳನ್ನು ಮಾನ್ಯ ಮಾಡಿ ಸದರಿ ನನ್ನ ದೂರು
ಅರ್ಜಿಯನ್ನು ಹಿನ್ನೆಲೆಯನ್ನುಟ್ಟುಕೊಂಡು, ಸನ್ಮಾನ್ಯ ಮುಖ್ಯ ಮಂತ್ರಿಗಳು ಕರ್ನಾಟಕ ಸರ್ಕಾರ
ಬೆಂಗಳೂರು ರವರು ಸದರಿ ಇಲಾಖೆಯ ಮತ್ತು ಯೋಜನೆಯ ಘಟಕಗಳಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ
ಸರ್ಕಾರದ ವತಿಯಿಂದ ಸಮಗ್ರ ತನಿಖೆಗೆ 2014-15ನೇ ಸಾಲಿನಿಂದ 2017-18ನೇ ಸಾಲಿನ
ವರೆಗೆ ಮಾನ್ಯ ಮುಖ್ಯ ಕಾರ್ಯದರ್ಶಿಗಳು ಕರ್ನಾಟಕ ಸರ್ಕಾರ ರವರಿಗೆ ಆದೇಶಿಸಿರುವುದರಿಂದ
ನನ್ನ ಹೋರಾಟಕ್ಕೆ ಜಯ ಗಳಿಸಿದಂತಾಗಿದೆ.

ಆದ್ದರಿಂದ ಸರ್ಕಾರವೇ ನನ್ನ ದೂರು ಅರ್ಜಿಯಲ್ಲಿನ ಅಂಶಗಳ ಅವ್ಯವಹಾರದ ಕುರಿತು
ಸಮಗ್ರ ತನಿಖೆ ಕೈಗೊಳ್ಳುವುದರಿಂದ ಪ್ರತ್ಯೇಕವಾಗಿ ನನ್ನ ದೂರು ಅರ್ಜಿಯ ಕುರಿತು ತನಿಖೆ
ಅವಶ್ಯಕತೆ ಇಲ್ಲ ಎಂದು ಭಾವಿಸಿ ಸದರಿ ನನ್ನ ದೂರು ಅರ್ಜಿಯನ್ನು
ಹಿಂಪಡೆದುಕೊಳ್ಳುತ್ತಿದ್ದೇನೆ.

ವಂದನೆಗಳೊಂದಿಗೆ,

ಇಂತಿ ತಮ್ಮ ವಿಶ್ವಾಸಿ,

ಸಹಿ/-

(ಶ್ರೀಮತಿ ಎಂ.ಹೆಚ್. ವಿಜಯಲಕ್ಷ್ಮಿ)

The withdrawal of the complaint was filed stating to the effect that the complainant was satisfied with the action of Hon'ble Chief Minister directing State-wide enquiry.

23. Based upon the direction of the Hon'ble Chief Minister an Enquiry Committee was constituted and a



comprehensive enquiry report was filed by the Enquiry Committee which also contained a report pertaining to the implementation of Krishi Bhagya Scheme in Gulbarga District that there was no irregularity committed by the officers. Therefore, the petitioners were tacitly exonerated by the Enquiry Committee.

24. During the pendency of consideration of the report submitted by the Enquiry Commission to the Hon'ble Chief Minister, the ADGP of the ACB, based on an earlier complaint given by the complainant-Smt. Vijayalakshmi who had unequivocally withdrawn her complaint and notwithstanding such withdrawal, communicates a letter to the 1st respondent forwarding the complaint and seeking previous permission/ approval as obtaining under Section 17A of the Act read with the General Circular dated 14.03.2016 (supra).

25. On the communication dated 19.10.2020, the competent authority grants prior permission/approval as obtaining under Section 17A of the Act on 3.02.2021 reading as follows:-

"ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ನಡುವಳಿಗಳು

ವಿಷಯ: ಜಂಟಿ ಕೃಷಿ ನಿರ್ದೇಶಕರು, ಕಲಬುರಗಿ ಹಾಗೂ ಇತರೆ ಕೃಷಿ ಇಲಾಖೆಯ ಅಧಿಕಾರಿಗಳ ವಿರುದ್ಧ ಸಲ್ಲಿಸಿರುವ ದೂರು ಅರ್ಜಿಗಳ ಕುರಿತು ತನಿಖೆ ನಡೆಸಲು ಪ್ರಕರಣವನ್ನು ಭ್ರಷ್ಟಾಚಾರ ನಿಗ್ರಹ ದಳಕ್ಕೆ ಅನುಮತಿ ನೀಡುವ ಬಗ್ಗೆ.

ಓದಲಾಗಿದೆ: ಅಪರ ಪೊಲೀಸ್ ಮಹಾನಿರ್ದೇಶಕರು, ಭ್ರಷ್ಟಾಚಾರ ನಿಗ್ರಹ ದಳ, ಬೆಂಗಳೂರು ಇವರ ಪತ್ರ ಸಂಖ್ಯೆ: ಎಸಿಬಿ/ಕೇಂಕ/ಈವ/ಕಲಬುರಗಿ/ಅವಿ/29/2019 ದಿನಾಂಕ: 19.10.2020.

ಪ್ರಸ್ತಾವನೆ

ಮೇಲೆ ಓದಲಾದ ಅಪರ ಪೊಲೀಸ್ ಮಹಾನಿರ್ದೇಶಕರ ಪರವಾಗಿ ಪೊಲೀಸ್ ಅಧೀಕ್ಷಕರು (ಕೇಂದ್ರ ಸ್ಥಾನ), ಭ್ರಷ್ಟಾಚಾರ ನಿಗ್ರಹ ದಳ, ಬೆಂಗಳೂರು, ಇವರ ಪತ್ರದಲ್ಲಿ ಶ್ರೀಮತಿ ಎಂ.ಎಸ್.ವಿಜಯಲಕ್ಷ್ಮೀ, ಫ್ಲಾಟ್ ನಂ.33, ಎಸ್ವಿಐ ಕಾಲೋನಿ, ಹಳೇ ಜೇವರ್ಗಿ ರಸ್ತೆ, ಕಲಬುರಗಿ ಇವರು 2016-17 ರಿಂದ 2018-19ನೇ ಸಾಲಿನವರೆಗೆ ಕೃಷಿ ಭಾಗ್ಯ ಯೋಜನೆಯಡಿಯಲ್ಲಿ ಮಾಡಿದ ಅಕ್ರಮಗಳ ಮೇಲೆ ಕಲಬುರಗಿ ಜಿಲ್ಲೆಯ ಕೃಷಿ ಇಲಾಖೆಯ ಅಧಿಕಾರಿಗಳ ವಿರುದ್ಧ ಕ್ರಮ ಕೈಗೊಳ್ಳುವಂತೆ ಪೊಲೀಸ್ ನಿರೀಕ್ಷಕರು, ಭ್ರಷ್ಟಾಚಾರ ನಿಗ್ರಹ ದಳ ಪೊಲೀಸ್ ಠಾಣೆ, ಕಲಬುರಗಿ, ಇಲ್ಲಿ ದೂರು ಸಲ್ಲಿಸಿರುತ್ತಾರೆ.



ಈ ದೂರಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ತನಿಖೆ ಕೈಗೊಳ್ಳಲು ಪೊಲೀಸ್ ಉಪಾಧ್ಯಕ್ಷರು, ಭ್ರಷ್ಟಾಚಾರ ನಿಗ್ರಹ ದಳ, ಈಶಾನ್ಯ ವಲಯ, ಕಲಬುರಗಿ ಇವರು ಶಿಫಾರಸ್ಸು ಮಾಡಿರುತ್ತಾರೆ. ಅದರನ್ವಯ ಅಪರ ಪೊಲೀಸ್ ಮಹಾನಿರ್ದೇಶಕರ ಕಛೇರಿಯಿಂದ 2016-17 ರಿಂದ 2018-19ರ ಅವಧಿಯಲ್ಲಿ ಕರ್ತವ್ಯ ನಿರ್ವಹಿಸಿರುವ ಹಾಗೂ ಕೃಷಿ ಭಾಗ್ಯ ಯೋಜನೆಯಡಿಯಲ್ಲಿ ಮಾಡಿದ ಅಕ್ರಮಗಳ ಕುರಿತಂತೆ ಆಪಾದನೆ ಇರುವ ಕಲಬುರಗಿ ಜಿಲ್ಲೆಯ ಕೃಷಿ ಇಲಾಖೆಯ ಈ ಕೆಳಕಂಡ ಅಧಿಕಾರಿಗಳ ವಿರುದ್ಧ ವಿಚಾರಣೆ/ತನಿಖೆ ಕೈಗೊಳ್ಳಲು ಭ್ರಷ್ಟಾಚಾರ ಪ್ರತಿಬಂಧಕ ಕಾಯ್ದೆ, 1988 ರ ಕಲಂ 17(ಎ) ರಡಿ ಹಾಗೂ ಸರ್ಕಾರದ ಆದೇಶ ಸಂಖ್ಯೆ: ಸಿಆಸುಇ 14 ಸೇಲೋಯು 2016 ದಿನಾಂಕ: 14.03.2016 ರನ್ವಯ ಪೂರ್ವಾನುಮತಿ ನೀಡುವಂತೆ ಕೋರಿರುತ್ತಾರೆ.

1. ಜಂಟಿ ಕೃಷಿ ನಿರ್ದೇಶಕರು, ಕಲಬುರಗಿ,
2. ಉಪ ಕೃಷಿ ನಿರ್ದೇಶಕರು-1, ಕಲಬುರಗಿ,
3. ಉಪ ಕೃಷಿ ನಿರ್ದೇಶಕರು-2, ಸೇಡಂ
4. ಸಹಾಯಕ ಕೃಷಿ ನಿರ್ದೇಶಕರು, ಆಳಂದ
5. ಸಹಾಯಕ ಕೃಷಿ ನಿರ್ದೇಶಕರು, ಅಫಜಲಪುರ
6. ಸಹಾಯಕ ಕೃಷಿ ನಿರ್ದೇಶಕರು, ಜೇವರ್ಗಿ
7. ಸಹಾಯಕ ಕೃಷಿ ನಿರ್ದೇಶಕರು, ಕಲಬುರಗಿ
8. ಸಹಾಯಕ ಕೃಷಿ ನಿರ್ದೇಶಕರು, ಚಿಂಚೋಳಿ
9. ಸಹಾಯಕ ಕೃಷಿ ನಿರ್ದೇಶಕರು, ಚಿತ್ತಾಪೂರ
10. ಸಹಾಯಕ ಕೃಷಿ ನಿರ್ದೇಶಕರು, ಸೇಡಂ.

ಮೇಲೆ ತಿಳಿಸಿದ ಹಿನ್ನೆಲೆಯಲ್ಲಿ, ಕೃಷಿ ಭಾಗ್ಯ ಯೋಜನೆಯಡಿಯಲ್ಲಿ ಮಾಡಿದ ಅಕ್ರಮಗಳ ಕುರಿತಂತೆ ಆಪಾದನೆ ಇರುವ ಕಲಬುರಗಿ ಜಿಲ್ಲೆಯ ಕೃಷಿ ಇಲಾಖೆಯ ಅಧಿಕಾರಿಗಳ ವಿರುದ್ಧ ತನಿಖೆ ಕೈಗೊಳ್ಳಲು ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರದ ಅನುಮತಿ ಅವಶ್ಯವಿರುವುದರಿಂದ ಹಾಗೂ ಸರ್ಕಾರದ ಆದೇಶ ಸಂಖ್ಯೆ: ಸಿಆಸುಇ 14 ಸೇಲೋಯು 2016. ದಿನಾಂಕ 14.03.2016ರ ಆದೇಶದಲ್ಲಿನ ಕಂಡಿಕೆ-5ರಲ್ಲಿ “ಸಾರ್ವಜನಿಕ ನೌಕರನು ತನ್ನ ಅಧಿಕೃತ ಕಾರ್ಯನಿರ್ವಹಣೆಯಲ್ಲಿ ಕೈಗೊಳ್ಳುವ ನಿರ್ಧಾರ ಅಥವಾ ಶಿಫಾರಸ್ಸುಗಳ ವಿರುದ್ಧ ಭ್ರಷ್ಟಾಚಾರ ನಿಗ್ರಹ ದಳವು ನೇಮಕಾತಿ ಪ್ರಾಧಿಕಾರದ ಪೂರ್ವಾನುಮತಿ ಇಲ್ಲದೇ ತನಿಖೆ ಪ್ರಾರಂಭಿಸಲು ಅವಕಾಶವಿರುವುದಿಲ್ಲ” ಎಂದು ಆದೇಶಿಸಲಾಗಿದೆ. ಆದ್ದರಿಂದ ಈ ಕೆಳಕಂಡ ಆದೇಶ.

ಸರ್ಕಾರದ ಆದೇಶ ಸಂಖ್ಯೆ: AGRI-AGS/40/2020,

ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 03.02.2021

ಪ್ರಸ್ತಾವನೆಯಲ್ಲಿ ವಿವರಿಸಿರುವ ಅಂಶಗಳ ಹಿನ್ನೆಲೆಯಲ್ಲಿ, 2016-17 ರಿಂದ 2018-19ರ ಅವಧಿಯಲ್ಲಿ ಕರ್ತವ್ಯ ನಿರ್ವಹಿಸಿರುವ ಹಾಗೂ ಈ ಅವಧಿಯಲ್ಲಿ ಕೃಷಿ ಭಾಗ್ಯ ಯೋಜನೆಯಡಿಯಲ್ಲಿ ಮಾಡಿದ ಅಕ್ರಮಗಳ ಕುರಿತಂತೆ ಆಪಾದನೆ ಇರುವ ಕಲಬುರಗಿ ಜಿಲ್ಲೆಯ ಕೃಷಿ ಇಲಾಖೆಯ ಈ ಕೆಳಕಂಡ ಅಧಿಕಾರಿಗಳ ವಿರುದ್ಧ ತನಿಖೆ ಕೈಗೊಳ್ಳಲು ಭ್ರಷ್ಟಾಚಾರ ಪ್ರತಿಬಂಧಕ ಕಾಯ್ದೆ, 1988 ರ ಕಲಂ 17(ಎ) ರಡಿ ಹಾಗೂ ಸರ್ಕಾರದ ಆದೇಶ ಸಂಖ್ಯೆ: ಸಿಆಸುಇ 14 ಸೇಲೋಯು 2016 ದಿನಾಂಕ: 14.03.2016ರ ಆದೇಶದಲ್ಲಿನ ಕಂಡಿಕೆ-5ರನ್ವಯ ತನಿಖೆ ಕೈಗೊಳ್ಳಲು ಭ್ರಷ್ಟಾಚಾರ ನಿಗ್ರಹ ದಳಕ್ಕೆ ಅನುಮತಿ ನೀಡಿ ಆದೇಶಿಸಿದೆ.

1. ಜಂಟಿ ಕೃಷಿ ನಿರ್ದೇಶಕರು, ಕಲಬುರಗಿ,
2. ಉಪ ಕೃಷಿ ನಿರ್ದೇಶಕರು-1, ಕಲಬುರಗಿ,
3. ಉಪ ಕೃಷಿ ನಿರ್ದೇಶಕರು-2, ಸೇಡಂ
4. ಸಹಾಯಕ ಕೃಷಿ ನಿರ್ದೇಶಕರು, ಆಳಂದ



5. ಸಹಾಯಕ ಕೃಷಿ ನಿರ್ದೇಶಕರು, ಅಫಜಲಪುರ
6. ಸಹಾಯಕ ಕೃಷಿ ನಿರ್ದೇಶಕರು, ಜೇವರ್ಗಿ
7. ಸಹಾಯಕ ಕೃಷಿ ನಿರ್ದೇಶಕರು, ಕಲಬುರಗಿ
8. ಸಹಾಯಕ ಕೃಷಿ ನಿರ್ದೇಶಕರು, ಚಿಂಚೋಳಿ
9. ಸಹಾಯಕ ಕೃಷಿ ನಿರ್ದೇಶಕರು, ಚಿತ್ತಾಪುರ
10. ಸಹಾಯಕ ಕೃಷಿ ನಿರ್ದೇಶಕರು, ಸೇಡಂ.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ
ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ,

ಸಹಿ/-03/02/2021

(ಜೋನ್ ಪ್ರಕಾಶ್ ರೋಡ್ರಿಗಸ್)
ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ,
ಕೃಷಿ ಇಲಾಖೆ (ಸೇವೆಗಳು ಮತ್ತು ಸಮನ್ವಯ)

ಇವರಿಗೆ,

1. ಪ್ರಧಾನ ಮಹಾಲೇಖಪಾಲರು (ಜಿ&ಎಸ್.ಎಸ್.ಎ)/ಇ&ಎಸ್.ಎಸ್.ಎ) ಕರ್ನಾಟಕ, ಹೊಸಕಟ್ಟಡ, ಆಡಿಟ್ ಭವನ, ಆಂಚೆ ಪೆಟ್ಟಿಗೆ ಸಂಖ್ಯೆ: 5359, ಬೆಂಗಳೂರು-01.
2. ಆಯುಕ್ತರು, ಕೃಷಿ, ಇಲಾಖೆ, ಶೇಷಾದ್ರಿ ರಸ್ತೆ, ಬೆಂಗಳೂರು-01,
3. ಅಪರ ಪೊಲೀಸ್ ಮಹಾ ನಿರ್ದೇಶಕರು, ಭ್ರಷ್ಟಾಚಾರ ನಿಗ್ರಹ ದಳ, ಖನಿಜ ಭವನ, ರೇಸ್‌ಕೋರ್ಸ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು (ನೊಂದಾಯಿತ ಅಂಚೆ ಸ್ವೀಕೃತ ಮುಖೇನ)
4. ಶಾಖಾ ರಕ್ಷಕ ಕಡತ/ಕಛೇರಿ ಪ್ರತಿ/ಹೆಚ್ಚುವರಿ ಪ್ರತಿ.”

A cursory perusal at the order dated 3.02.2021 granting prior approval/permission for commencement of any of the three contingencies narrated hereinabove unmistakably reveals that it bears no application of mind. The complaint itself was withdrawn by the complainant when the Hon'ble Chief Minister directed State-wide enquiry which had also submitted its report on 23.01.2020 exonerating the officials including the petitioners and the letter of permission was sought after 9 months of submission of the report by the Enquiry Committee which was constituted by the Hon'ble Chief Minister. Without looking into any of the facts narrated hereinabove, an order under Section 17A is passed which is cryptic, bald and absolutely laconic and cannot stand the scrutiny of law.

26. The formation of opinion by the statutory authority while granting prior permission under Section 17A should reflect application of mind with reference to the material available on record. The provision is akin to the recording of reasons while granting prior permission



under Section 19 of the Act. The bedrock of these provisions are to avoid or discourage malicious and vexatious prosecutions. In the teeth of the afore-narrated facts, the order granting prior approval, impugned in the writ petition, would, without a shadow of a doubt result in a vexatious prosecution against the petitioners. The order impugned falls foul of the intent and purport of Section 17A. Therefore, the order impugned loses its legal legs to stand as it is ex-facie illegal.

27. In terms of the narrative hereinabove what remains to be considered is whether the matter will have to be remitted back to the hands of the competent authority to reconsider the order of prior approval by recording cogent reasons. But, a subsequent development to the order impugned would hold the hands of this Court to submit the petitioners to a further rigmarole of proceedings. The Government in the Department of Agriculture has issued a communication on 1.03.2021 accepting the report of the Inquiry Committee constituted by the Hon'ble Chief Minister dated 23.01.2020 and closing the proceedings on all concerned. The communication dated 01.03.2021 reads as follows:-

ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ಸಂಖ್ಯೆ: AGRI/-AML/42/2019

ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸಚಿವಾಲಯ,
ಬಹುಮಹಡಿಗಳ ಕಟ್ಟಡ,
ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 01.03.2021.

ಇವರಿಂದ:

ಸರ್ಕಾರದ ಅಪರ ಮುಖ್ಯ ಕಾರ್ಯದರ್ಶಿಗಳು,
ಕೃಷಿ ಇಲಾಖೆ,
ಬೆಂಗಳೂರು.

ಇವರಿಗೆ,

ಆಯುಕ್ತರು,
ಕೃಷಿ ಇಲಾಖೆ, ಶೇಷಾದ್ರಿ ರಸ್ತೆ,
ಕೆ.ಆರ್.ಸರ್ಕಲ್, ಬೆಂಗಳೂರು.

ಮಾನ್ಯರೇ,



ವಿಷಯ: ಕೃಷಿ ಭಾಗ್ಯ ಯೋಜನೆಯ ಅನುದಾನದಲ್ಲಿ ನಡೆದಿರುವ ವ್ಯಾಪಕ
ಅವ್ಯವಹಾರಗಳ ಬಗ್ಗೆ ಸಮಗ್ರ ತನಿಖೆ ನಡೆಸುವ ಬಗ್ಗೆ..

ಉಲ್ಲೇಖ: ನಿಮ್ಮ ಪತ್ರ ಸಂಖ್ಯೆ:ಉಕ್ಯನಿ/ಕೃಷಿ ಭಾಗ್ಯ/ತನಿಖೆ/ 2019-20
ದಿನಾಂಕ: 23.01.2020.

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಉಲ್ಲೇಖಿತ ಪತ್ರದ ತನಿಖಾ ವರದಿಯನ್ನು
ಪರಿಶೀಲಿಸಿದೆ. 2014-15ನೇ ಸಾಲಿನಿಂದ 2017-18ನೇ ಸಾಲಿನವರೆಗೆ ಕೃಷಿ ಭಾಗ್ಯ
ಯೋಜನೆಯ ಅನುದಾನದಲ್ಲಿ ನಡೆದಿರುವ ವ್ಯಾಪಕ ಅವ್ಯವಹಾರಗಳಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ
ಸಲ್ಲಿಸಿರುವ ತನಿಖಾ ವರದಿಯನ್ನು ಪುರಸ್ಕರಿಸಿ, ಪ್ರಕರಣವನ್ನು ಮುಕ್ತಾಯಗೊಳಿಸಲಾಗಿದೆ.

ಈ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಸ್ವೀಕೃತಿವಾಗುವ ಅರ್ಜಿಗಳನ್ನು ನಿಯಮಾನುಸಾರ
ಪರಿಶೀಲಿಸಿ ನಿಮ್ಮ ಹಂತದಲ್ಲಿಯೇ ಅರ್ಜಿದಾರನಿಗೆ ಹಿಂಬರಹ ನೀಡಲು ಅಗತ್ಯ ಕ್ರಮ
ವಹಿಸುವಂತೆ ತಮ್ಮನ್ನು ಕೋರಲು ನಿದೇಶಿಸಲ್ಪಟ್ಟಿದ್ದೇನೆ.

(ಮಾನ್ಯ ಮುಖ್ಯಮಂತ್ರಿಯವರಿಂದ ಅನುಮೋದಿಸಲ್ಪಟ್ಟಿದೆ)

ತಮ್ಮ ನಂಬುಗೆಯ,
ಸಹಿ/-
01.03.2021.
(ಪಿ.ಸತ್ಯಭಾಮ)

ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ,
ಕೃಷಿ ಇಲಾಖೆ (ಯೋಜನೆ)

Therefore, when Government itself has accepted the report and closed all the proceedings against all concerned concerning Krishi Bhagya Scheme for the years 2014-15 to 2017-18 during which the petitioners were also functioning at Gulbarga, it would be unjust to remit the matter back to the competent authority to reconsider the matter, but it cannot preclude the Government in taking any action in the event it becomes necessary in accordance with law, which would not become a tool of harassment against the petitioners."

In the light of the issue in the *lis* being covered by the
afore-extracted order passed by this Court in
W.P.No.200356/2021, on all its fours, the subject petition



stands disposed, in the very same terms that is ordered in the aforesaid writ petition. Therefore, the following:

ORDER

- i. The writ petition is allowed.
- ii. The order dated 04.01.2023, issued by respondent No.1 stands quashed.
- iii. The State Government will have the liberty to institute proceedings in accordance with law.

Pending interlocutory application/s, if any, is disposed, as a consequence.

**Sd/-
JUDGE**

nvj
List No.: 2 Sl No.: 40