

Date of Order 05.06.2017 W.P.No.106442/2016  
Hare Krishna Metallics Pvt. Ltd.,  
Vs.  
The State of Karnataka and others.

**IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH**

DATED THIS THE 05<sup>th</sup> DAY OF JUNE, 2017

PRESENT

**THE HON'BLE DR. JUSTICE VINEET KOTHARI**

AND

**THE HON'BLE DR. JUSTICE H. B. PRABHAKARA SASTRY**

**WRIT PETITION No.106442/2016 (GM-KLA)**

BETWEEN:

HARE KRISHNA METALLICS PVT. LTD.,  
SY NO.20, KASAN KHANDI ROAD,  
HIREBAGNAL VILLAGE,  
TQ. AND DIST. KOPPAL,  
REPTD. BY ITS VICE PRESIDENT,  
SHRI RAKESH AGARWAL S/O. RAVI GUPTA,  
AGE 39 YEARS, OCC: VICE PRESIDENT,  
HARE KRISHNA METALLICS PVT. LTD.,  
HIREBAGNAL, TQ AND DIST. KOPPAL.

... PETITIONER

(BY SRI. A.S.PATIL, ADV.)

AND:

1 THE STATE OF KARNATAKA,  
REPTD. BY ITS SECRETARY,  
TO THE DEPARTMENT OF REVENUE,  
VIDHANA SOUDHA, BENGALURU.

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- 2 THE PRINCIPAL SECRETARY,  
TO THE DEPARTMENT OF FOREST,  
ECOLOGY & ENVIRONMENT,  
VIKASA SOUDHA, BENGALURU,
- 3 THE ADDITIONAL REGISTRAR OF ENQUIRIES,  
KARNATAKA LOKAYUKTA,  
M.S.BUILDING, DR. AMBEDKAR VEEDHI,  
BENGALURU.
- 4 THE KARNATAKA STATE POLLUTION  
CONTROL BOARD, "PARISARA BHAVAN"  
1<sup>ST</sup> TO 5<sup>TH</sup> FLOOR, NO.49,  
CHURCH STREET, BENGALURU-01,  
REPTD. BY ITS MEMBER SECRETARY.
- 5 THE DEPUTY COMMISSIONER,  
KOPPAL DISTRICT & THE CHAIRMAN,  
KOPPAL DISTRICT LEVEL COMMITTEE,  
KOPPAL.
- 6 THE REGIONAL OFFICER,  
KARNATAK STATE POLLUTION  
CONTROL BOARD, KOPPAL, DIST. KOPPAL.
- 7 SHRI SIDDAPPA S/O. FAKKIRAPPA KADLI,  
AGE 45 YEARS, OCC: AGRICULTURE,  
R/O. HIREBAGNAL, TQ AND DIST. KOPPAL.
- 8 SHRI HANAMAPPA S/O. FAKKIRAPPA KADLI,  
AGE 42 YEARS, OCC: AGRICULTURE,  
R/O. HIREBAGNAL, TQ AND DIST. KOPPAL.
- 9 SHRI RAMANNA S/O. FAKKIRAPPA KADLI,  
AGE 35 YEARS, OCC: AGRICULTURE,  
R/O. HIREBAGNAL, TQ AND DIST. KOPPAL.

...RESPONDENTS

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(BY SRI. M.KUMAR, AGA FOR R1, R2 & R5;  
SRI G.I.GACHCHINAMATH, ADV. FOR R4 & R6;  
SRI MALLIKARJUNASWAMY B. HIEMATH, ADV. FOR  
R3;  
SRI B. SHARANABASAWA, ADV. FOR R7 TO R9)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 & 227 OF CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DATED 06.03.2015, PASSED BY THE RESPONDENT NO.3 AS PER ANNEXURE-G AND TO GRANT INTERIM ORDER TO STAY THE OPERATION AND FURTHER PROCEEDINGS PURSUANT TO THE IMPUGNED ORDER DATED 06.03.2015, PASSED BY THE RESPONDENT NO.3, AS PER ANNEXURE-G AND TO DIRECT THE RESPONDENT NO.5 COMMITTEE TO NOT TO PROCEED FURTHER WITH THE APPLICATION AS PER ANNEXURE-A DATED 06.10.2014 MADE BY THE RESPONDENTS NO.7 TO 9 CLAIMING ALLEGED DAMAGE/COMPENSATION PERTAINING TO THE YEAR 2016-17 AND FOR FURTHER PERIOD

THIS PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, **DR. VINEET KOTHARI, J.**, MADE THE FOLLOWING:

### **ORDER**

1. The present writ petition has been filed by the petitioner Hare Krishna Metallics Pvt. Ltd., Koppal, aggrieved by the order passed by the Lokayukta, State of Karnataka, Bengaluru, vide Annexure-G, dated 06.03.2015, on a complaint filed by certain agriculturists claiming that their lands in Survey

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Nos.64, 61, 62, 51, 52 & 49 in Hirebaganal village of Koppal Taluk and District were being contaminated and polluted by the emissions and discharges of the petitioner's Industrial unit which is engaged in the production of sponge iron and the captive power plant of a capacity of 12 MW. On the said complaint, the learned Lokayukta has passed the impugned order on **06.03.2015**, giving certain directions to the Deputy Commissioner of the said District after constitution of a committee and after giving an opportunity to hearing to the concerned complainants, as well as the Industry, the petitioner herein, to decide the damages to be paid to each individual victim and pass appropriate orders. The relevant portion of the order passed by the learned Lokayukta is reproduced below for ready reference.

*“ The pollution due to the running of the industry is a recurring phenomena and entitely cannot be controller. The problem of causing damage to the adjacent farmers' lands and to their helath, cattles, pet animals, etc., are recurring in nature. The farmers who are poor are either illiterate or do not have sufficient means to go over offices and visit again and again. In*

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*view of the above circumstances, it is just and proper to pass the following orders.*

(1) *A committee shall be constituted under the Chairmanship of the Deputy Commissioner of Koppal District, Koppal with two Members – one member who is nominee of the Chairman of Pollution Control Board and another member who is a Professor from the Agricultural University, Raichur as deputed by the Registrar of Agricultural University, Raichur. The said committee shall consider the damage caused due to pollution created by the above industry and as such the amount of damages caused to each person.*

(2) *The persons, who are victims of damage have to file application before the Deputy Commissioner, every year on or before the end of January. The Deputy Commissioner shall place such applications before the Committee and the Committee shall hear the concerned petitioner and industry in respect of each application and decide the damage to be paid to each individual victim and pass appropriate orders. After passing such order, the Deputy Commissioner shall recover the said amount from the Industry and pay to the concerned victim.*

(3) *The above exercise will be completed by the Committee and the Deputy Commissioner on or before the end of March every year.*

(4) *The above said arrangement shall continue until further orders and the Committee has to decide the applications of victims every year. The Deputy Commissioner will implement the decision of the Committee.*

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(5) *For the year 2014, if claim petitions are filed by the Complainant or any other person, the same shall be disposed of by the Committee to be constituted as stated above. If the Complainant or any other persons have not filed the petition for the year 2014, who has suffered loss, the same shall be filed within 15 days from the date of receipt of this order and on receipt of such petition/s the same shall have to be dealt as stated above within three months from the date of receipt of the petitions.*

*With the above directions, the present complaint is disposed of. The Deputy Commissioner shall file the report about the action taken by him on the decision of the Committee in respect of the petitions received from the victims, every year within 15 days of the after the implementation of Committee's decision.*

*Copy of this order be sent to the Deputy Commissioner, Koppal District; Chairman of the Karnataka Pollution Control Board, Bengaluru and Registrar of Agricultural University, Raichur for information and necessary action. A copy of this order may also be send to the complainant for information.*

3. The learned counsel for the petitioner Mr. A.S.Patil has submitted before us that the said impugned order is illegal and beyond the powers of the Lokayukta under Section 9 of the Karnataka Lokayukta Act, 1984, r/w. Section 8 of the said Act,

particularly Section 8 (1) (b) of the said Act. The provisions of Section 8 (1)(b) of the Act provides that, the Lokayukta or Upalokayukta shall not conduct any investigation under this Act, in the case of a complaint involving a grievance in respect of any action, if the complainant has or had any remedy by way of appeal, revision, review or other proceedings before any Tribunal, Court, Officer or other Authority and has not availed of the same.

4. The learned counsel urged that on the complaint filed by the complainants – agriculturists who did not avail any such remedy under Clause 8(1)(b) of the said Act, therefore the learned Lokayukta, could not have entertained these complaints and directed the constitution of such a Committee and further direct the Deputy Commissioner to pass appropriate orders on such complaints and determine the damages payable to such individual victims. He further submitted that, after passing of the said order, the Deputy Commissioner every year has started

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the exercise of determining such compensation payable to these complainants and one such order has already been challenged by the petitioner-Industry before this Court by way of **W.P.No.113613/2015**, which is pending in this Court. He also urged before us that even for the next year, the Deputy Commissioner has again passed another similar Order and the petitioner-Industry has complied with the same and deposited the amount of compensation.

5. On the other hand, learned counsel for the Lokayukta, Mr. Mallikarjunaswamy B. Hiremath has supported the impugned Order and has drawn our attention to the provisions of Section 9 of the Act which empowers Lokayukta or Upalokayukta to proceed to hold investigation upon a complaint made by any person in the form of his statement supported by an affidavit and after holding such preliminary enquiry, the Lokayukta or Upalokayukta can proceedings to



pass appropriate orders as considered appropriate in the facts and circumstances of the case.

6. We have heard the learned counsel and perused the provisions of Section 8 & 9 which are relevant for the present case. The same are quoted below for ready reference.

**8. Matters not subject to investigation:-**

*(1) Except as hereinafter provided, the Lokayukta or an Upalokayukta shall not conduct any investigation under this Act in the case of a complaint involving a grievance in respect of any action, -*

*(a) if such action relates to any matter specified in the Second Schedule; or*

*(b) if the complainant has or had, any remedy by way of appeal, revision, review or other proceedings before any tribunal, Court officer or other authority and has not availed of the same.*

*(2) The Lokayukta or an Upalokayukta shall not investigate, -*

*(a) any action in respect of which a **formal and public enquiry** has been ordered with the prior concurrence of the Lokayukta or an Upalokayukta, as the case may be;*

*(b) any action in respect of a matter which has been referred for inquiry, under the **Commission of Inquiry Act, 1952** with the prior concurrence of the Lokayukta or an Upalokayukta, as the case may be;*

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*(c) any complaint involving a grievance made after the expiry of a period of six months from the date on which the action complained against become known to the complainant; or*

*(d) any complaint involving an allegation made after the expiry of five years from the date on which the action complained against is alleged to have taken place:*

*Provided that he may entertain a complaint referred to in clauses (c) and (d) if the complainant satisfies that he had sufficient cause for not making the complaint within the period specified in those clauses.*

*(3) In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lokayukta or an Upalokayukta to question any administrative action involving the exercise of a discretion except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion can prima facie be regarded as having been improperly exercised.*

#### **9. Provisions relating to complaints and investigations-**

*(1) Subject to the provisions of this Act, **any person may make a complaint** under this Act to the Lokayukta or an Upalokayukta.*

*Provided that in case of a grievance, if the person aggrieved is dead or for any reason, unable to act for himself, the complaint may be made or if it is already made, may be prosecuted by his legal representatives or by any other person who is authorized by him in writing in this behalf.*

*(2) Every complaint shall be made in the **form of a statement***

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*supported by an affidavit and in such forms and in such manner as may be prescribed.*

*(3) Where the Lokayukta or an Upalokayukta proposes, after making such **preliminary inquiry as he deemed fit to conduct any investigation** under this Act, he.-*

*(a) shall forward a copy of the complaint and in the case of an investigation initiated suo-motu by him, the opinion recorded by him to initiate the investigation under sub-section (1) or (2), as the case may be, of section 7; to the public servant and the Competent Authority concerned;*

*(b) shall afford to such public servant an opportunity to offer his comments on such complaint or opinion recorded under sub-section (1) and (2) of section 7 as the case may be;*

*(c) may make such order as to the safe custody of documents relevant to the investigation, as he deems fit.*

*(4) Save as aforesaid, the procedure for conducting any such investigation shall be such, and may be held either in public or in camera, as the Lokayukta or the Upalokayukta, as the case may be, considers appropriate in the circumstances of the case.*

*(5) The Lokayukta or the Upalokayukta may, in his discretion, refuse to investigate or cease to investigate any complaint involving a grievance or an allegation, if in his opinion,-*

*(a) the complaint is frivolous or vexatious or is not made in good faith;*

*(b) There are no sufficient grounds for investigating or, as the case may be, for continuing the investigation; or*

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*(c) Other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail such remedies.*

*(6) In any case where the Lokayukta or an Upalokayukta decides not to entertain a complaint or to discontinue any investigation in respect of a complaint he shall record his reasons therefor and communicate the same to the complainant and the public servant concerned.*

*(7) The conduct of an investigation under this Act against a Public servant in respect of any action shall not affect such action, or any power or duty of any other public servant to take further action with respect to any matter subject to the investigation.*

7. We do not find any infirmity or illegality in the order passed by the learned Lokayukta, vide Annexure-G dated 06.03.2015. No order passed by a competent authority against which any remedy by way of appeal, revision, review or other proceedings, which could lie under the provisions of the relevant Act has been placed before us in the present writ petition, which would be a sufficient remedy in terms of Section 8(1)(b) of the Act and would not require any

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investigation by the Lokayukta under Section 9 of the Act in terms of the Section 8(1)(b) of the Act.

8. The contention of learned counsel for the petitioner-Industry Mr. A.S.Patil, that in pursuance of the impugned order passed by the learned Lokayukta, the Deputy Commissioner has started determining compensation, of course, after giving an opportunity of hearing both to the complainants, as well as to the concerned Industry namely the petitioner herein, do not fall within the ambit and scope of Section 8(1) (b) of the Act. Such orders apparently passed in consequence or in the implementation of the said directions of the learned Lokayukta, cannot render the impugned order passed by the learned Lokayukta himself as contrary to law or illegal. The jurisdiction of the Lokayukta or Upalokayukta as defined in Section 9 of the Act is wide and the said Authority constituted under the Karnataka Lokayukta Act, 1984 even gives suo-moto powers to such authority on such complaints to record their

opinion and initiate the investigations in terms of the provisions of the Act.

9. The impugned order, Annexure-G dated 06.03.2015 is perfectly within the four corners of the powers conferred on the said Authority under the provisions of the Act under Section 9 of the Act and on the anvil of provisions of Section 8(1)(b) of the Act, the said impugned order cannot be described as illegal or without jurisdiction in manner.

10. The said order passed by the Lokayukta itself mandates the concerned committee headed by the Deputy Commissioner to comply with principles of natural justice and after providing opportunity of hearing to complainants as well as the concerned Industry, if the Industry or the petitioner is aggrieved by the orders passed by the concerned committee or the Deputy Commissioner, it is entitled to challenge the same in accordance with law and as noted above, one such order has

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already been challenged by the petitioner-Industry by way of a writ petition, before this Court which is pending consideration.

11. Merely because for the subsequent year also, the learned Deputy Commissioner has passed similar order after giving an opportunity to hearing to the concerned parties, which stands complied with by the petitioner by deposit of the compensation amount. Such subsequent Order/s do not render the present order passed by the learned Lokayukta as illegal in any manner which is just the consequence and implementation of the order to take further proceedings in accordance with law which is being done by the Deputy Commissioner. Whether such consequential orders are in accordance with law or not can be a subject matter of challenge by the aggrieved party. However, no such challenge to these subsequent orders is involved in the present case and therefore, we refuse to express any opinion on the legality and validity of such orders subsequently passed by the learned Deputy Commissioner.

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12. The learned counsel for the petitioner has also brought to our notice that the Karnataka State Pollution Control Board had already passed an order vide Annexure-F on 05.03.2015 on the complaint filed by the respondent Nos.7 to 9 and the State Pollution Control Board had given certain directions to the present petitioner-Industry in the said Order dated 05.03.2015 which according to the petitioner he had complied with the same. It is for the petitioner to bring these facts to the knowledge of the concerned Deputy Commissioner or the Committee, which while deciding the complaints or petitions for damages in terms of the orders passed by the Lokayukta can consider the same.

13. In view of the aforesaid, we do not find any good ground to quash or set aside the impugned order passed by the learned Lokayukta, vide Annexure G on 06.03.2015 and therefore, the present writ petition is found to be devoid of merit. Hence, the same is liable to be dismissed.



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14. The writ petition is accordingly, dismissed. No costs.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

\*Svh/-