IN THE COURT OF LXXXI ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH 82)

Present

Sri Santhosh Gajanan Bhat, B.A.L., LL.B.,
LXXXI Addl. City Civil & Sessions Judge,
Bengaluru City (CCH-82)
(Special Court exclusively to deal with criminal cases related to former and elected MPs/ MLAs in the State of Karnataka)

Dated this the 18th day of January, 2025

PCR No. 53/2022

COMPLAINANT : Sri N.R.Ramesh
S/o Narayan Raju
Aged about 54 years
R/at: No.2910, 14th 'A' Cross
Banashankari 2nd Stage
Bengaluru-560 070

(Sri Mohan S. Reddy, Advocate for Complainant)

Vs.

ACCUSED: 1. Sri Siddaramaiah
S/o Siddarame Gowda
Aged about 73 years
Former Chief Minister of Karnataka
No.206, 16th Cross M.C.layout,
Vijayanagar Bangalore-560 040

2. Sri L. Vivekananda
@ Kings Court Vivek,

Major
Managing Director
M/s. Vivek Hotels
#1294/I-B, J.L.B.Road
Mysuru-570 005

ORDER ON CLOSURE PROTEST FILED BY THE INVESTIGATION AGENCY

The complainant herein had presented complaint under Sec.200 of the Code of Criminal Procedure ('Cr.P.C.' for short), and had requested the court to take cognizance against the Accused person for committing offences punishable under Section 7, 8, 13(1)(d) and Sec.13(2) of the Prevention of Corruption Act, 1988 (herein after referred to as P.C.Act) and Sec.3 and 4 of the Prevention of Money Laundering Act, 2002.

2. The complainant had contended that he is public spirited person and also a social worker who was also a former leader of BBMP and responsible citizen doing yeomen service to the society and working

for the benefit of the society to uphold the constitutional rights of the citizenry.

3. It is further averred in the complaint that the Accused No.1 herein was the 22nd Chief Minister of Karnataka, who had served the State of Karnataka from 13.5.2013 to 17.05.2018. It is alleged in the complaint that during his tenure as Chief Minister of Karnataka, he had received kickback from Accused No.2 to an extent of Rs.1,30,00,000/- on 28.07.2014 by way of cheque which was evident from the declaration given by Accused No.1 before Hon'ble Lokayukta in Form-IV as enclosed along with the complaint under the pretext of nominating Accused No.2 as Steward of Bengaluru Turf Club Limited (herein after referred as BTCL).

4. It has been alleged by the Complainant that soon after receipt of the aforesaid amount of Rs.1,30,00,000/-, the Accused No.2 was nominated as

Member of the Managing Committee and Steward to BTCL by the grace of Accused No.1. It is contended that the act of the Accused No.1 would indicate of obtaining monetary benefit from Accused No.2 and in furtherance of the same the Accused No.2 was rewarded with office of profit by his own Government, indicating of obtaining of pecuniary benefit being bestowed upon Accused No.1 in lieu of his nomination by the Government as Steward of BTCL.

5. It is also narrated in the complaint that as per the Code of Conduct of Ministers issued by the Government of India, Ministry of Home Affairs, it is mandated that a Minister should not accept valuable gifts except close relatives and he or members of his family should not accept any gifts at all from any person with whom he may have official dealings and also he should not permit a member of his family, contract debts of a nature likely to embarrass or influence him in the discharge of his official duties. By

pointing out the same, it has been contended that on the receipt of the aforesaid amount of Rs.1,30,00,000/- under the guise of advancement of loan from Accused No.2, he was nominated as Steward by the Government of Karnataka. It is the specific assertion that nomination to the post of Steward of BTCL was in furtherance of quid pro quo concept and hence, the act of Accused No.1 amounted to commission of offence punishable under Sec.7, 8, 13 and Sec 13(1)(d) r/w 13(2) of the Prevention of Corruption Act along with Accused No.2 and also under Sec.3 of PMLA Act.

6. On receipt of the said complaint, this court had directed the jurisdictional Investigating Agency i.e., Karnataka Lokayukta to furnish status report since the complainant had already filed complaint before them. The Investigating Agency on completion of their preliminary inquiry had filed a closure report submitting that there was no act of quid pro quo

against accused No.1 Sri Siddaramaiah who is present Chief Minister of the State of Karnataka. The other reason for filing of closure report is lack of materials to proceed against the accused persons, since the complainant had not turned up for investigation.

7. On filing of the closure report, the same came to be challenged by the complainant by filing necessary protest petition. The complainant had vehemently submitted in his protest petition that the impugned act of Investigating Agency itself was illegal and in fact without giving him proper opportunity they had proceeded to closure the report. It is submitted that the Investigating Agency had directed him to appear before them on or before 4.6.2023 and whereas the notice itself was served subsequently thereafter. On the basis of submissions and also on perusal of the records, this court was of the opinion that the investigation / preliminary inquiry which was conducted by the Investigating Agency was not in

accordance with law and hence, the report of preliminary inquiry came to be rejected. Further this court had directed the I.O. to conduct further investigation/ preliminary inquiry and to file fresh final report within 6 months.

8. Now the Investigating Agency have once again filed closure report on completion of their preliminary inquiry. It has been submitted by the I.O. that he had conducted thorough preliminary inquiry with respect to the allegations leveled by the complainant and also he had perused the materials and recorded statement of accused No.1 and 2. It is the contention of the Investigating Agency that on cogent reading of the materials which were available before him, it would indicate that appointment of accused No.2 as Steward to BTC would not amount to an act of quid pro quo for receiving a sum of Rs.1,30,00,000/- from accused No.2. It is further narrated by the I.O. that the accused No.2 was not

nominated to BTC for the first time and in fact he had held that position at Mysore Race Course Club for the year 1999-00 and also BTC in the year 2004 and 2005 and he had also worked as Managing Committee Member of BTC who was being nominated by the Government. It is further narrated by the investigating officer that receiving of loan amount by accused No.1 was clearly declared in his assets and liabilities and in his income tax returns and the same was declared by the accused No.2 also. Since the post of Stewardship was only Honorary post and no remuneration was paid towards the same, it would not attract rigors of Sec.7, 8, 9 or 13 of the P.C.Act, 1988. Lastly, it is submitted by the investigating officer that appointment of Steward was not an Quid Pro Quo for receiving a sum of Rs.1,30,00,000/- from the accused No.2. Under the circumstances, the I.O. has filed Closure Report.

9. Once again on presenting of the Closure Report, the complainant had filed protest petition

against the same. In his protest petition, mainly it has been contended that the accused No.1 had received a sum of Rs.1,30,00,000/- from accused No.2 Sri L.Vivekananda and immediately thereafter he was nominated to BTC as Steward. It is also been submitted that the investigation report does not indicate about existence or otherwise of a prima facie case and investigating officer was bound to explain what was the updated inquiry conducted by him when compared to the earlier investigation and also the reasons for arriving at a very same conclusion. It is also been submitted that there was lack of adequate investigation and also in the report which has been furnished would indicate that the statement of accused No.1 Sri Siddaramaiah was recorded at his residence and as per his orders. It is also been submitted that since the statement is in typed form which was allegedly recorded in the residence of Accused no.1 the same should have been explained about the scribe who

had typed the statement. Non examination of the same clearly cast doubt on the investigation, since it is being submitted that entire investigation process was hand-picked and manipulated by the accused No.1, who is Chief Minister of the State. It is also been submitted that the Report does not disclose the reason for non-payment of money to accused No.2 which is in Crores of Rupees and also it is declared in the income tax returns filed by the parties. It is contended that the the investigating officer should have ascertained the reasons for non-repayment of the alleged loan amount even after lapse of nearly 10 years. Further it is submitted that the Accused No.1 had failed to produce any materials to indicate the non-completion of his house for which he had allegedly borrowed money from accused no.2 which would once again fortify their contention of hollowness in the investigation. It is also been narrated in the protest petition that when the Chief Minister himself had endorsed candidature of

accused No.2 which was proposed by the Finance Department, the amount which was transferred prior to such recommendation would indicate an act of quid pro quo which was surprisingly ignored by the Investigating Agency. It is submitted that the act would attract the provisions of Sec.13(1) (d) of P.C.Act which deals with criminal misconduct. The protest petition also indicates that the I.O. had not considered Ministerial Code of conduct which was required to be adhered and also flawed investigation overlooked significant materials and also crucial documents were not appreciated by the Investigating Agency. The complainant has also placed reliance on the various authorities and it is lastly submitted that when a Chief Minister is an accused in a criminal matter and when he is being summoned by the I.O., it would have been appropriate for him to attend investigation, instead of calling investigating officer to his residence at a specified time, which in turn would cast serious

aspersion on the manner of investigation being conducted. As such the complainant has sought for rejecting the Closure report and to take cognizance in the above case against accused No.1 and 2.

10. During the course of arguments, the learned counsel for complainant Sri Mohan Reddy has vehemently argued and pointed out to the manner in which the investigation is being conducted. It is his submission that the notice which was issued by the investigating officer to the accused No.1 was received by the Legal Advisor of the Chief Minister wherein an endorsement has been made which is extracted as follows:

> ***"Received copy on 30.8.2024. Please conduct enquiry at the home Residence of Hon'ble Chief Minister in the morning on 2.9.2024***."

11. By pointing out the same, the learned counsel has vehemently argued that the act of the

accused himself fixing the date, time and place to the investigating officer to conduct investigation is unheard under the eyes of law. It is also been submitted that though the accused No.1 might be holding high office, he was required to appear before the Investigating Agency and a free and fair investigation should have been carried out. The learned counsel for complainant has also placed reliance on the judgment of Hon'ble Apex Court reported in **(1998) 1 SCC 226 (Vineet Narain & Others vs Union Of India & Another)** wherein Hon'ble Apex Court has held as:

> *"The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. It also has adverse effect on foreign investment and funding from the International Monetary Fund and the World Bank who have warned that future aid to under-developed countries may be subject to the requisite steps being taken to eradicate corruption, which*

prevents international aid from reaching those for whom it is meant. Increasing corruption has led to investigative journalism which is of value to a free society. The need to highlight corruption in public life through the medium of public interest litigation invoking judicial review may be frequent in India but is not unknown in other countries: R v Secretary of State for Foreign and Commonwealth Affairs, (1995) 1 WLR 386.

Of course, the necessity of desirable procedures evolved by court rules to ensure that such a litigation is properly conducted and confined only to mattes of public interest is obvious. This is the effort made in these proceedings for the enforcement of fundamental rights guaranteed in the Constitution in exercise of powers conferred on this Court for doing complete justice in a cause. It cannot be doubted that there is a serious human rights aspect involved in such a proceeding because the prevailing corruption in public life, if permitted to continue unchecked, has

ultimately the deleterious effect of eroding the Indian polity."

12. Further he has relied upon another judgment of Hon'ble High Court of Andhra Pradesh reported in **1990 AIR AP 20 (Vidadala Harinatha Babu and Vs. NTR, Chief Minister)** wherein several do's and dont's for a person holding high office in public at large has been explained. By pointing out the same, the learned counsel for complainant has vehemently argued that the impugned report filed by the Investigating Agency is in a lackadaisical manner which require intervention of the Court. Learned counsel for complainant has contended that the nomination of accused No.2 to the prestigious post of Stewardship of Bangalore Turf Club and immediately prior to his nomination receiving a sum of Rs.1,30,00,000/- from him would clearly indicate an act of quid pro quo. It is also submitted that since the aforesaid amount was paid, the accused No.2 was

nominated to the post of Stewardship and accordingly, the Investigating Agency did not focus on the aforesaid aspect. The learned counsel for complainant has also taken this court with respect to the provision of Sec.7 and 13 of P.C. Act and has requested the court to take cognizance for the aforesaid offences.

13. Heard the submissions and also perused the records and the report furnished by the Investigating Agency. The points that arise for my consideration are as follows:

1) Whether the complainant has made out sufficient grounds to set aside the Closure Report?

2) What order?

14. My findings on the above points are as hereunder:

Point No.1: In the **Negative**

Point No.2: As per final order

for the following:

REASONS

15. **Point No.1:** Shorn of unnecessary details the facts in narrow compass is that a complaint came to be filed by complainant N.R.Ramesh before the jurisdictional Investigating Agency Karnataka Lokayukta alleging that the accused No.1 who was the then Chief Minister of Karnataka State during the period 2013-18 had obtained a sum of Rs.1.30 Crore from accused No.2 L.Vivekananda and as a quid pro quo had nominated him to honorary post as Steward of Bengaluru Turf Club. It has been submitted that though the same was brought to the notice of the Investigating Agency, they had not conducted any investigation. Simultaneously, the complainant had also filed a private complaint before this court wherein status report was summoned and initially a closure report came to be filed. Since it was noticed by this court that the Investigation Agency had not adhered to

the principles of natural justice, the court had accepted the contentions urged by the complainant and had set aside the preliminary Closure Report. Thereafter, the Investigating Agency had once again conducted preliminary investigation and have again filed a closure report.

16. Being aggrieved by the same and urging various grounds it has been contended by the complainant that the foremost aspect which would be pointed out is non adherence to the principles of natural justice by the investigating agency. It has been submitted vehemently by the learned counsel for complainant that the court had directed the Investigating Agency to conduct investigation in accordance with law and also by following the principles of natural justice, but they had toed to the lines of accused No.1 and they had surrendered themselves to the might of power of Chief Minister which the accused No.1 Mr.Siddaramaiah is enjoying.

In order to highlight the same, the learned counsel for complainant has pointed out to the endorsement being issued by the Legal Advisor to Chief Minister Mr.A.S.Ponnanna, which is extracted supra which indicates that the Legal Advisor to the Chief Minister had requested the investigating officer to record the evidence at his residence in the morning period.

17. On perusal of the same it indicates that a request has been made by the Legal Advisor to the Chief Minister to record his statement in his home residence on 2.9.2024. It is relevant to note that the Investigating Agency had issued police notice for his appearance on 2.9.2024. It is also to be kept in mind that the court had fixed time for filing of the Final Report. Under the circumstances though at the first instance it seems that the Investigating Agency have toed to the line of accused No.1, the court is also required to be consider the fact that the accused No.1 is also holding a Constitutional Position of Chief

Minister of the State of Karnataka. No doubt the settled law as stated by Lord Denning "Be ye never so high, the law is above you" which means however high a person may be, he has to bow down to the authority of the law, is the main cardinal principle. The purpose for which he is being summoned is also required to be considered. In the instant case, it is not that the Accused No.1 is facing trial and in the above case only preliminary enquiry was being conducted. Further the main intention of conducting preliminary enquiry is to collect material facts and only if prima facie materials are made out, then the proceedings can be initiated. In the case on hand only enquiry was being conducted and as such not much importance can be attached to the place of enquiry and ultimately the court is required to consider the nature of materials that is being collected by the investigating agency. In the instant case, the records indicate that subsequently, the I.O. had recorded the statement of accused No.1

wherein he had explained in detail about the nature of borrowing which he has made from accused No.2. It is the specific assertion of accused No.1 Mr.Siddaramaiah that he knew accused No.2 L.Vivekananda for the last 40 years and due to his friendship, he had requested him for financial accommodation and in furtherance of the same, a loan of Rs.1.30 crore was lent to him. The aforesaid fact is also forthcoming in the Income Tax Returns and also in the Assets and Liabilities Report which has been filed by accused No.1. No doubt the learned counsel for complainant has submitted that act of handing over such huge extent of money and further when there are no materials to indicate its repayment, the same leads to suspicious circumstances is also required to be considered from all materials which are available on record. The court is also required to consider the fact of alleged friendship which is contended by the accused persons. If only the accused No.2 had

suppressed the fact of lending the amount or if accused No.1 had suppressed the fact of borrowing the same either in his Income Tax Returns or in his Assets and Liabilities, the same would have given room for suspicion. That apart it is also required to be considered that the amount was lent in the year 2014 and the same was declared in their IT return for the said period and even accused No.1 had declared in his assets and liabilities list which he had furnished to the Hon'ble Lokayukta. All the aforesaid act had taken place at an undisputed point of time i.e. in the year 2014 and whereas the complaint was filed in the year 2022.

18. Apart from that the court is also required to consider that whether the receiving amount and nominating accused No.2 to the Post of Steward of Bengaluru Turf Club can be construed as quid pro quo. In order to better appreciate the said contentions, the complaint is once again revisited wherein it has

been specifically submitted that the act of accused No.1 amounts to attracting the rigors of Sec.7, 8, 13(1)(d) and 13(2) of the P.C.Act, 1988. In order to better appreciate the same, the provision of Sec.7 of P.C.Act is extracted which reads as follows:

> **Sec.7**. [Offence relating to public servant being bribed. [Substituted by Act No. 16 of 2018, dated 26.7.2018.] - Any public servant who,-
>
> (a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or
>
> (b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or

> (c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine."

19. The main ingredient of Sec.7 indicates that a public servant obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly, then the same would attract the provision of Sec.7 of the Act.

20. Whereas the provision of Sec.8 indicates that of bribing a public servant to induce him to perform improperly a public duty. The aforesaid provision of Sec.8 is allegedly connected to accused

No.2 and now with respect to Sec.13(1)(d) of the Act, the same is extracted herein and it reads as:

> **"13. Criminal misconduct by a public servant.** – (1) A public servant is said to commit the offence of criminal misconduct, -
>
> (a) xxxx
>
> (b) xxxx
>
> (d) xxxx
>
> (d) if he:- (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
>
> (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
>
> (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or
>
> (e)xxxx"

21. The provision of Sec.13(1)(d) also indicates and depicts that by corrupt or illegal means, by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage, the same would be attracted.

22. In the instant case, when the provision of Sec.7, 8 and 13(1)(d) is summarized, it would indicate that the complainant has to indicate that accused No.1 committed an act by corrupt or illegal means by abusing his position as public servant by obtaining any valuable thing or pecuniary advantage or he had received an amount or accepts from any person undue advantage to perform public duty. In order to attract the rigors of Sec.7 the following requirements are to be met out which are:

> "(i) the accused at the time of offence was or expected to be a public servant'
>
> (ii) that he accepted or obtained some personal gratification;

(iii) such gratification was not illegal remuneration;

(iv) that he had accepted gratification in question as a motive or reward for doing;

(a) doing or forbearing to do any official act; or

(b) showing or forbearing to show favour or disfavour to someone in exercise of his official functions; or

(c) rendering or attempting to render any service or disservice to someone with the Central or any State Government or with any public servant."

23. When the aforesaid aspect is carefully appreciated it would indicate that the word which has been used in the aforesaid provision is "accept". The meaning of the word 'accept' as per **Oxford English Dictionary, Vol-1, Page No.70** is:

"to take or receive willingly or with consenting mind, to take

formally with contemplation of its consequences and obligation".

24. When the aforesaid provision is carefully appreciated, it indicates that in order to attract the provision, it is required to prove that a public servant has accepted or obtained or agrees to accept or obtain from any person, any gratification other than legal remuneration, as a motive or reward for doing any official favour. In other words, there should a presumption towards payment or acceptance of gratification. At this juncture it would be appropriate to place reliance on the Constitutional Bench judgment of the Hon'ble Apex court reported in **(2023) 4 SCC 731 (Neeraj Dutta V State (NCT of Delhi))** wherein it is held as:

> ***6.*** *Section 13(1)(d) of the Act has the following ingredients which have to be proved before bringing home the guilt of a public servant, namely:*
> *(i) The accused must be a public servant.*
> *(ii) By corrupt or illegal means, obtains for himself or for any other person any*

valuable thing or pecuniary advantage; or by abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.

(iii) To make out an offence under Section 13(1)(d), there is no requirement that the valuable thing or pecuniary advantage should have been received as a motive or reward.

(iv) An agreement to accept or an attempt to obtain does not fall within Section 13(1)(d).

(v) Mere acceptance of any valuable thing or pecuniary advantage is not an offence under this provision.

(vi) Therefore, to make out an offence under this provision, there has to be actual obtainment.

(vii) Since the legislature has used two different expressions, namely, "obtains" or "accepts", the difference between these two must be noted.

11. *While discussing the expression "accept", it was observed in C.K. Damodaran Nair case [C.K. Damodaran Nair v. Union of India, (1997) 9 SCC 477 : 1997 SCC (Cri) 654] that "accept" means to take or receive with a*

"consenting mind". Consent can be established not only by leading evidence of prior agreement but also from the circumstances surrounding the transaction itself without proof of such prior agreement. If an acquaintance of a public servant in expectation and with the hope that in future, if need be, would be able to get some official favour from him, voluntarily offers any gratification and if the public servant willingly takes or receives such gratification it would certainly amount to "acceptance". Therefore, it cannot be said, as an abstract proposition of law, that without a prior demand, there cannot be "acceptance". The position will, however, be different so far as an offence under Section 5(1)(d) read with Section 5(2) of the 1947 Act is concerned. Under the said Section, the prosecution has to prove that the accused "obtained" the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under Section 4(1) of the 1947 Act as it is available only in respect of offences under Sections 5(1)(a) and (b) and not under Sections 5(1)(c), (d) or (e) of the 1947 Act. According to this Court, "obtain" means to secure or gain (something) as a result of request or effort. In the case of obtainment, the

initiative vests in the person who receives and, in that context, a demand or request from him will be a primary requisite for an offence under Section 5(1)(d) of the 1947 Act unlike an offence under Section 161 of the Penal Code, 1860 (for short "IPC"), which can be established by proof of either "acceptance" or "obtainment".

31.9. *It was next submitted that Section 7 of the Act speaks of acceptance or obtainment or an agreement to accept or an attempt to obtain. Further, the expression "acceptance" must be differentiated from the expression "receipt" as they convey different meanings in the context of Section 7 of the Act. That Section 7 of the Act does not speak of receipt but only of acceptance. In order to convert receipt into acceptance, it should be proved that a demand is made from the bribe-giver. In other words, the bribe-giver should have offered the gratification while demanding a favour from the public servant.*

31.10. *Therefore, the mere receipt of any property or valuable security would not tantamount to acceptance unless the bribe-giver had made an offer demanding favour from the public servant. This fact in issue should be proved by direct evidence. However, if*

the bribe-giver or the complainant dies or turns "hostile" and the fact cannot be proved by direct evidence, then it could be proved by the evidence of another witness who has direct knowledge of the said fact or even by circumstantial evidence. In the event the fact of acceptance is proved, Section 20 would apply and a presumption has to be raised that the acceptance was the reward of an act. Further, no presumption of acceptance can be raised under Section 114 of the Evidence Act in the absence of foundational facts being proved.

88.3. *(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.*

88.4. *(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:*

(i) if there is an offer to pay by the bribe-giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act.

In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Sections 13(1)(d)(i) and (ii), respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of

obtainment under Sections 13(1)(d)(i) and (ii) of the Act.

25. Once again the aforesaid aspect had fallen to the consideration of the Hon'ble Apex court in the judgment reported in **2023 SCC Online SC 320 (Jagtar Singh V State of Punjab)** wherein it is held as:

9. The conclusions of the Constitution Bench judgment referred above, have been summarized in paragraph 74, which read thus:

"74. What emerges from the aforesaid discussion is summarised as under:

(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.

(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

(c) Further, the fact in issue, namely the proof of demand and acceptance of

illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more

would not make it an offence under Section 7 or Section 13(1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13(1)(d) and (i) and (ii) of the Act.

(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

(f) In the event of complaint turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand

of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the presumption can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

(g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13(1)(d)(i) and (ii) of the Act.

(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in point (e) as the former is a mandatory presumption while the latter is discretionary in nature."

(emphasis added)

26. When the aforesaid facts are carefully narrated to the principles, what could be crystallized is

that mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13(1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13(1)(d) and (i) and (ii) of the Act. When the aforesaid postulate is applied to the case on hand firstly it is required to establish that the accused No.1 had accepted money as illegal gratification. Admittedly, in the instant case, a sum of Rs.1.30 Crore was transferred by accused No.2 to accused No.1 Mr. Siddaramaiah in the year 2014. It is also not in dispute that the aforesaid fact was disclosed by both

the parties in their Income Tax Returns and also by accused No.1 in his annual Assets and Liabilities. In the circumstances, the contention of the complainant that it has to be presumed as an illegal gratification cannot be accepted.

27. Further in order to consider the aforesaid facts, I have also bestowed my anxious reading to the fact that whether the provision of Sec.13 would be attracted. The records which have been furnished by the Investigating Agency indicates of the office notes which has been collected by them with respect to appointment of accused No.2 as Steward to BTC. The Office note indicates that a recommendation was made towards appointment Government nominees on the Committee of BTC Ltd. Particularly a recommendation was made as per the Office Note Para-5 wherein it was suggested that as per the Articles of Association Regulation 32A of BTC, three stewards and one committee member was to be nominated and in that a

recommendation was made to appoint the Chief Secretary of Government, Finance Department, Police Commissioner and accused No.2 L.Vivekananda as Stewards and one Mr.L.Shivashankar as Committee Member. Thereafter, a note has been made that in order to nominate the approval of the Chief Minister was required and hence, the same was placed before the Chief Minister. In order to better appreciate the same, the relevant provisions of BTC and its Articles of Association is required to be considered. The management of the club is vested in a committee of management consisting of 14 members of whom 4 members were nominated by the Government of Karnataka and as per the Articles of Association of the Club provides for the constitution of the Committee of Management consisting of 14 members of whom 9 shall be the Stewards of the Club as per Article 31 and 32 and remaining 5 members shall be the committee members. It is also noticed that 6 of the 9 Stewards

and 4 of the 5 committee members are elected among the Club Members and the remaining 3 Stewards and one Committee Member are nominated by the Government of Karnataka. As per Article 51 the Stewards are in charge and control of racing by enforcing the Rules of Racing. Clause (b) of Article 51 enables them to take such action as they may consider necessary to ensure that Race Meetings are properly and regularly conducted. When the aforesaid aspects are applied to the facts of the case, it is pertinent to note that nowhere in the official communication it has been described that the recommendation was made as per the directions of the Chief Minister, but it was in deed prepared at the behest of the Finance Department and after going through various stages of recommendations, the same was placed before the Chief Minister towards the appointment of Stewards. At para-7, once again it has been discussed that the orders of the Chief Minister were required for

nomination of Stewards and Member, as the General Body Meeting was expected to be held on 29.9.2014 and the list was required to be finalized before the said date. Thereafter, once again after passing through various stages, it was placed before the then Chief Minister i.e., accused No.1 Sri Siddaramaiah wherein he had opined to continue the members. On the basis of the same, the note at para-7, 8, and 9 was approved and accused No.2 was appointed Steward. In other words, it would indicate that till such point of time, the genesis of the recommendation was not from accused No.1, but a proposal was made by the concerned Department wherein the Chief Minister had recommended to continue the existing list.

28. The other important aspect which is required to be considered is nature of the post for which the recommendation was made. Admittedly, the accused No.2 Mr. L.Vivekananda was recommended to the post of Steward, which is a honorary Post. Now the

main aspect which is required to be considered is whether 'honorarium' can be equated with office of profit. The **Shorter Oxford Dictionary** gives the meaning of the word "***honorarium***" as an honorary reward, a fee for professional service rendered, while one of the meanings of the word "salary" is, fixed payment made periodically to a person as compensation for regular work, remuneration for services rendered, fee, honorarium. Further in another judgment of the Hon'ble Apex Court has discussed about the concept of the word 'profit'. In the judgment rendered by the Hon'ble Apex Court reported in **AIR 1954 SC 653 (Ravanna Subanna V G S Kageerappa)** it has been held as:

> *"The plain meaning of the expression seems to be that an office must be held under Government to which any pay, salary, emoluments or allowance is attached. The word 'profit' connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount would not be material; but the amount of money receivable by a person in*

connection with the office he holds may be material in deciding whether the office really carries any profit."

29. The aforesaid judgment throws light on the subject that the emoluments or the allowance when attached should indicate that the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit. When the aforesaid principle is applied to the case on hand, it indicates that the post to which Accused No.2 was nominated was a honorary post which doesn't indicate that the money he had received was not a honorary or there are no materials to indicate that the Accused No.2 had obtained any other emoluments along with the honorarium.

30. At the same time, what is required to be considered is exercise of discretion. The court is conscious of the words which have been used under

Sec.13(1)(d) of the Act and also under Sec.7 and 8 of the Act. If for instance, Sec.7 of P.C.Act is to be excluded as there was no demand or acceptance, still the provision of Sec.13(1)(d) is to be considered. Appointing a person to the discretionary post by the Government with the recommendation of the Governor always lies with the Government. It is the settled principle of law that with respect to recommendations, the scope for interference is very minimum and only if it is pointed out that the discretion is exercised in a arbitrary and in mechanical manner, then the same can be interfered with. In this regard, reliance is placed on the judgment of **Hon'ble Apex Court reported in (1991) 1 SCC 212 (*Shrilekha Vidyarthi (Kumari) v. State of U.P.*,)** wherein Hon'ble Apex Court held as:

> *21. The Preamble of the Constitution of India resolves to secure to all its citizens Justice, social, economic and political; and Equality of status and opportunity. Every State action must be aimed at achieving this goal. Part IV of the Constitution contains 'Directives*

Principles of State Policy' which are fundamental in the governance of the country and are aimed at securing social and economic freedoms by appropriate State action which is complementary to individual fundamental rights guaranteed in Part III for protection against excesses of State action, to realise the vision in the Preamble. This being the philosophy of the Constitution, can it be said that it contemplates exclusion of Article 14 — non-arbitrariness which is basic to rule of law — from State actions in contractual field when all actions of the State are meant for public good and expected to be fair and just? We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the constitutional scheme to accept the argument of exclusion of Article 14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but

standard form contracts between unequals.

22. There is an obvious difference in the contracts between private parties and contracts to which the State is a party. Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to

> *comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.*
>
> *23. Thus, in a case like the present, if it is shown that the impugned State action is arbitrary and, therefore, violative of Article 14 of the Constitution, there can be no impediment in striking down the impugned act irrespective of the question whether an additional right, contractual or statutory, if any, is also available to the aggrieved persons.*

31. At the cost of repetition once again the factual aspects are to be revisited. I have bestowed my anxious reading to the Closure Report filed by the Investigating Agency. In the Closure Report, it has been submitted that during the period 1998-99, the accused No.2 L.Vivekananda had acted as Steward of Mysore Turf Club and also later on he was nominated

as Steward in the year 2003-04 to Bangalore Turf Club and thereafter, he was again nominated as Steward to Bangalore Turf Club. All the aforesaid aspects would indicate that he was not a novice who was nominated by the Government by exercising their discretionary power arbitrarily. It indicates that Accused No.2 was otherwise eligible to be appointed to the post of Steward and no arbitrariness can be pointed out in this regard. As such the nomination which are made by accused No.1 seems to have been justified.

32. Now adverting the question of adhering to the principles of natural justice, though the submissions made by the learned counsel for complainant with respect to recording of statement at the residence of the Chief Minister at his convenience, seems to be improper, at the same time, the court is required to focus its attention to the entire materials which has been collected by the Investigating Agency. The Investigating Agency has collected the entire

income tax returns and also the statement, affidavits which were filed by the accused No.1, his bank account extract, which indicated of transfer of amount and also the declaration being filed by the accused No.2. I have also looked in to the statement which is recorded with respect to accused No.2. The accused No.2 has specifically stated that he had lent the amount as an interest free loan, which is also depicted in his I.T. returns. Since, he had every eligibility to be nominated to the post of Stewardship and also for the reason that it was Honorary Post through which no illegal gratification or gain could have been achieved, it is not a case to attract the rigors of Sec.7, 8 or 13 of P.C.Act. further the learned counsel for Complainant has also argued that the investigating agency has not provided sufficient time for the purpose of investigation. If the same is to be accepted as true and correct, the complainant was not prevented or debarred from producing any other additional material

before the court at the time of contesting the closure report by filing protest petition. As noticed from the records, all that it is submitted in the protest petition is that he was not provided with sufficient opportunity. Even otherwise, the law with respect to considering the protest petition after filing of B report is well settled. The law doesn't circumscribe the court from taking cognizance by setting aside B final report, if sufficient materials are provided. However, in the instant case apart from making allegations of attracting the rigors of P. C Act no other additional materials are provided. At the same time, it is also to be reminded that the alleged incident had taken place in the year 2014, whereas the complaint was filed for the first time in the year 2022 after lapse of nearly 8 years. Thereafter, several volleys of litigation had taken place. The court is not taking any exceptions towards filing of the complaint belatedly, at the same time, the reasons for filing the complaint after lapse of nearly 8 years is not

forthcoming in the entire complaint. With respect to delay in a similar case which was filed by the Complainant herein Sri N R Ramesh, the Hon'ble High Court had held in **W.P.25078/2023 (Sri N R Ramesh V The Chief Secretary and others)** dated 11/11/2024 as follows:

> *"5.2. Apart from the above aspects, a weighty consideration because of which the Court would not entertain the present public interest petition is that it seeks to raise challenge to the Government Order after a gap of eleven years. The order was passed on 03.01.2013 for special purpose as above and the transferable development rights were given in that connection. The yawning gap of eleven years itself smacks lack of bona fide on part of the petitioner. In the pleadings, not a whisper is found about the delay in instituting such a petition after eleven years. In any view, the Court would not entertain the public interest petition filed after more than a decade, even otherwise, it does not found to be containing any merit.*

33. Even in the instant case, the matter is being raked up after a gap of nearly 8 years and even though the question of illegal gratification can be raised at any point of time, sufficient reasons are to be assigned for delay.

34. To sum up it is noticed that the records though indicate that Accused No.1 Mr Siddaramaiaha had received a sum of Rs1,30,00,000/- from Accused No.2 L Vivekananda the same cannot be held to be an act of quid pro quo towards his nomination as Steward of BTC. Further the court has carefully appreciated the provisions of Section 7 and Section 13 of the Prevention of Corruption Act, 1988 along with the settled judgment of the Hon'ble Apex court which would clearly indicate that the act of nominating Accused No.2 as Steward as obtaining undue advantage or illegal gratification. Under the circumstances, there are no materials to proceed against accused No.1 Sri Siddaramaiah and accused

No.2 Sri L.Vivekananda and the Closure Report filed by the Investigating Agency is to be accepted. Accordingly, I answer point No.1 in the **Negative**.

35. **Point No.2**: In view of my findings on point No.1, I proceed to pass the following:-

ORDER

The Closure Report filed by the Deputy Superintendent of Police, Karnataka Lokayukta, Bengaluru dated 12.9.2024 is hereby accepted.

(Dictated to Stenographer Grade-I in open court from 5.00 to 5.45 p.m. on 18th day of January, 2025 and pronounced, thereafter, the same was transcribed and typed by him, revised, corrected and signed by me)

SANTHOSHGAJANANABHAT

Digitally signed by SANTHOSHGAJANANABHAT
Date: 2025.01.21 14:53:31 +0530

(Santhosh Gajanan Bhat)
LXXXI Addl. City Civil & Sessions Judge,
Bengaluru City (CCH-82)
(Special Court exclusively to deal with criminal cases related to elected former and sitting MPs/MLAs in the State of Karnataka)