

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 17TH DAY OF FEBRUARY, 2020

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR. JUSTICE M.I.ARUN

WRIT PETITION NO.51684 OF 2019 (GM-RES)PIL

BETWEEN:

SAMAJ PARIVARTHANA SAMUDAYA
(A SOCIETY REGISTERED UNDER THE
PROVISIONS OF KARNATAKA SOCIETIES
REGISTRATION ACT 1960),
REPRESENTED BY ITS FOUNDER PRESIDENT,
SRI S.R. HIREMATH,
OFFICE AT "ASHADEEP",
JAYANAGAR CROSS, SAPTAPUR,
DHARWAD-580 001.

...PETITIONER

(BY SRI BASAVARAJU S., ADVOCATE AND
SRI GOUTHAM A.R., ADVOCATE)

AND:

1. GOVERNMENT OF KARNATAKA
BY ITS CHIEF SECRETARY,
VIDHANA SOUDHA,
DR.AMBEDKAR ROAD,
BENGALURU-560 001.

2. DEPUTY SECRETARY TO GOVERNMENT
DEPARTMENT OF PERSONAL AND
ADMINISTRATIVE REFORMS (VIGILANCE),
VIDHANA SOUDHA,
BENGALURU-560 001.
3. SECRETARIAT TO THE GOVERNOR OF KARNATAKA
RAJ BHAVAN, RAJ BHAVAN ROAD,
BENGALURU.
4. SHRI BHIMANAGOUDA SANGANAGOUDA PATIL
JUDGE (RTD), HIGH COURT OF KARNATAKA,
UPA-LOKAYUKTA, MULTI-STOREYED BUILDING,
DR.AMBEDKAR ROAD,
BENGALURU-560 001.

...RESPONDENTS

(BY SRI PRABHULING K. NAVADGI, ADV. GENERAL A/W
SRI VIKRAM HUILGOL, HCGP FOR R1, R2 AND R3;
SRI ASHOK HARANAHALLI, SENIOR COUNSEL FOR
SRI JOSEPH ANTHONY, ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO
DECLARING THAT THE RESPONDENT NO.4 HAS NO
AUTHORITY TO HOLD AND CONTINUE TO HOLD THE
PUBLIC OFFICE OF THE KARNATAKA UPA-LOKAYUKTA,
UNDER THE KARNATAKA LOKAYUKTA ACT, 1984;
QUASHING THE ORDER BEARING NO.DPAR 168 SLU 2017
DATED 20.11.2019 PASSED BY THE GOVERNOR OF
KARNATAKA, APPOINTING 4TH RESPONDENT AS

KARNATAKA UPA-LOKAYUKTA, COPY PRODUCED AND MARKED AS ANNEXURE-G AND ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, RAVI MALIMATH J., PASSED THE FOLLOWING:

ORDER

The petitioner claims to be a Society registered under the provisions of the Karnataka Societies Registration Act, 1960. That it is engaged in the activities for the betterment of the Society in general and for protection of natural resources etc.

2. That the office of the Upa-Lokayukta of State of Karnataka fell vacant on 1-3-2018 on the retirement of Hon'ble Shri Justice Subhash B.Adi, Former Judge, High Court of Karnataka. Consequently, the then Chief Minister of Karnataka initiated steps for filling up that vacancy. The letter dated 24-7-2018 vide Annexure-A was addressed by the Hon'ble Chief Minister to the Hon'ble Chief Justice of

the High Court of Karnataka, requesting him to suggest the name of an eligible person, along with details, for being considered for the appointment to the post of the Karnataka Upa-Lokayukta. In pursuance whereof, the then Chief Justice of Karnataka, addressed a letter dated 14-9-2018, vide Annexure-B, to the Hon'ble Chief Minister, recommending the name of Hon'ble Shri Justice A.N.Venugopala Gowda, Former Judge, High Court of Karnataka, who retired on 15-6-2017, as the suitable person to be appointed as the Karnataka Upa-Lokayukta. The Curriculum Vitae, of Hon'ble Shri Justice A.N.Venugopala Gowda, was also enclosed. In view of Hon'ble Shri Justice Abhay Shreeniwas Oka, taking oath as the Chief Justice of Karnataka, on 10-5-2019, a letter was addressed by the Chief Minister dated 20-6-2019 vide Annexure-C, requesting the Hon'ble Chief Justice, to suggest the name of an eligible person, along with details, for appointment to the post of the Karnataka Upa-Lokayukta. The same was replied by the Hon'ble Chief Justice by his letter dated 22-6-2019 vide Annexure-D, to

the Hon'ble Chief Minister. It was stated therein that the Hon'ble Chief Justice reiterates the name of Justice Sri A.N.Venugopala Gowda, namely the recommendation made by his predecessor. Thereafter, a letter was written by the Hon'ble Chief Minister on 12-11-2019, vide Annexure-E, to the Hon'ble Chief Justice of Karnataka. It was indicated therein that the four Constitutional Authorities namely, the Chairman of the Karnataka Legislative Council, the Speaker of the Karnataka Legislative Assembly, the Leader of opposition of the Karnataka Legislative Council and the Leader of the Opposition of the Karnataka Legislative Assembly have recommended Hon'ble Sri Bhimanagouda Sanganagouda Patil, to be appointed as the Upa-Lokayukta in the existing vacancy. That the recommendation of the Hon'ble Chief Justice, recommending the name of Hon'ble Shri Justice Venugopala Gowda has been brought to the notice of the above four authorities. Therefore, the said facts were placed for consideration before the Hon'ble Chief Justice. The same was reacted by the Hon'ble Chief Justice by his

letter dated 14-11-2019 vide Annexure-F. While acknowledging the letter dated 12-11-2019, it was stated that the Hon'ble Chief Justice is unable to concur with the recommendation made known to him through the aforesaid letter. Since there is no sufficient material placed before him by the State Government that warrants change of the recommendation earlier made by him and his learned predecessor, he maintains the recommendation. Thereafter, a Notification was issued by the State vide Annexure-G, dated 20-11-2019 appointing Justice Shri Bhimanagouda Sanganagouda Patil, as the Upa-Lokayukta of Karnataka by His Excellency, the Governor of Karnataka in exercise of the powers conferred under Section 3(1) of the Karnataka Lokayukta Act, 1984. Questioning the same, the instant writ petition is filed seeking for a declaration that respondent No.4 has no authority to hold and continue to hold the public office of the Karnataka Upa-Lokayutka; to quash the order dated 20-11-2019 vide Annexure-G, passed by the Governor of

Karnataka appointing respondent No.4 as the Karnataka Upa-Lokayukta and other incidental reliefs.

3.a) Sri S.Basavaraj, the learned counsel for the petitioner submits that adequate consultation has not taken place. That even though the name of respondent No.4, was circulated to all the consultees, there was no material placed before the Hon'ble Chief Justice of Karnataka so far as respondent No.4 is concerned. The letter of the Hon'ble Chief Justice dated 14-11-2019 vide Annexure-F, clearly indicates absence of material with regard to respondent No.4. That the State was duty bound to place all such material for consideration before the Hon'ble Chief Justice. Having failed to do so, the same cannot be said to be an effective consultation. In the absence of an effective consultation, the appointment of respondent No.4 as the Upa-Lokayukta becomes unsustainable.

b) In support of his case, he relies on the Judgment of the Hon'ble Supreme Court in the case of

JUSTICE CHANDRASHEKARAI AH (RETIRED) vs. JANEKERE C.KRISHNA AND OTHERS reported in (2013) 3 SCC 117. He places reliance on paragraphs 42, 43, 44, 77, 78, 79, 124, 128 and 134 of the said Judgment.

By relying on the aforesaid paragraphs, it is contended that the consultation should be effective and meaningful and also that the particulars of the candidate should also be furnished. The same having not been done, vitiates the appointment.

c) Reliance was also placed on the judgment of the Hon'ble Supreme Court in the case of N.KANNADASAN vs. AJOY KHOSE AND OTHERS reported in (2009)7 SCC 1. The said Judgment was considered by the Hon'ble Supreme Court in the aforesaid Judgment of Justice CHANDRASHEKARAI AH (RETIRED) vs. JANEKERE C.KRISHNA AND OTHERS. Hence, we do not find it necessary to reiterate the same.

d) The further contention of the petitioner's counsel is based on the letter of the Hon'ble Chief Justice

vide Annexure-F. The letter of the Hon'ble Chief Justice reiterates that there is no reason to change the recommendation made and secondly that he does not concur with the recommendation made known to him by the letter of the Chief Minister. Hence, he pleads that there is no effective consultation with the Chief Justice. Hence, he pleads that the petition be dismissed.

4.a) Sri Prabhulinga K.Navadgi, the learned Advocate General appearing for respondents 1, 2 and 3 defends the impugned Notification. He submits that none of the contentions as raised by the petitioner's counsel deserve any merit. The reliance placed on the aforesaid Judgment of the Hon'ble Supreme Court is misconceived. That the four other consultees have independently recommended the name of respondent No.4. The said recommendation was also brought to the notice of the Hon'ble Chief Justice in terms of the letter of the Chief Minister dated 12-11-2019 vide Annexure-E. The letter of the Hon'ble Chief Justice reiterating the recommendation

made by his predecessor was also brought to the notice of the other four consultees. Therefore, all the consultees were aware of the name of respondent No.4. It is sufficient and complete compliance of law. That is what the Hon'ble Supreme Court have held in the aforesaid Judgment. Reliance is placed on paras 137 to 145 of the very Judgment.

b) It is therefore contended that the Hon'ble Supreme Court therein held that all the constitutional authorities must be aware of the name of any candidate under consideration and they should not be kept in the dark about any name. All the consultees should be made known of all the names suggested by either one of the consultees or all the consultees. That satisfies the requirement of law. It is not necessary that there has to be a physical meeting or through correspondence. The same can even be done through the video link. The form of consultation and the venue of consultation is not important. What is important is the substance of the

consultation. That the matter has to be looked at pragmatically and not semantically. What is important is that none of the consultees should be kept in the dark of the suggested name.

c) Therefore, he submits that there is no merit in this petition. He has also furnished the records of the proceedings. We have examined the same.

5.a) Sri Ashok Haranahalli, learned Senior counsel appearing for the counsel for respondent No.4 defends the impugned order. He submits that the law as laid down by the Hon'ble Supreme Court in the case of CHANDRASHEKARATAH(RETIRED) vs. JANEKERE C.KRISHNA AND OTHERS reported in (2013) 3 SCC 117. covers the case on hand in para 45, 46, 47 and 154. Therefore, he pleads that the petition be dismissed.

6. Heard learned counsels.

7. The primary contention of the petitioner is one of absence of effective consultation. Reliance is placed on

Section 3(2)(b) of the Karnataka Lokayukta Act, 1984

which reads as follows:-

"3. Appointment of Lokayukta and Upalokayukta.- (1) For the purpose of conducting investigations and enquiries in accordance with the provisions of this Act, the Governor shall appoint a person to be known as the Lokayukta and one or more persons to be known as the Upalokayukta or Upalokayuktas.

(2)(a) A person to be appointed as the Lokayukta shall be a person who has held the office of a Judge of the Supreme Court or that of the Chief Justice of a High Court and shall be appointed on the advice tendered by the Chief Minister in consultation with the Chief Justice of the High Court of Karnataka, the Chairman, Karnataka Legislative Council, the Speaker, Karnataka Legislative Assembly, the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Assembly.

(b) A person to be appointed as an Upa-lokayukta shall be a person who has held the office of a Judge of a High Court for not less than five years and shall be appointed on the advice tendered by the Chief Minister in consultation with the Chief Justice of the High Court of Karnataka, the Chairman, Karnataka Legislative Council, the Speaker, Karnataka Legislative Assembly, the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Assembly. "

He, therefore reiterates that consultation is a must.

That no appointment can be made without consultation.

That consultation has been understood to mean an effective consultation. Therefore, in terms of the

Judgment of the Hon'ble Supreme Court, in Justice

CHANDRASHEKARAI AH(RETIRED) vs. JANEKERE

C.KRISHNA AND OTHERS reported in (2013) 3 SCC 117

there is an absence of consultation.

8. We have considered the Judgment in JUSTICE
CHANDRASHEKARAI AH(RETIRED) vs. JANEKERE

C.KRISHNA AND OTHERS reported in (2013) 3 SCC 117 at length. The question of consultation was considered by the Hon'ble supreme Court vide para-77 which reads as under:-

"77. The Chief Minister is legally obliged to consult the Chief Justice of the High Court and other four consultees, which is a mandatory requirement. The consultation must be meaningful and effective and mere eliciting the views or calling for recommendations would not suffice. The consultees can suggest various names from the source stipulated in the statute and those names have to be discussed either in a meeting to be convened by the Chief Minister of the State for that purpose or by way of circulation. The Chief Minister, if proposes to suggest or advise any name from the source earmarked in the statute that must also be made available to the consultees so that they can also express their views on the name or names suggested by the Chief Minister. The consultees can express their honest and free opinion about the names suggested by the other consultees including the Chief Justice or the Chief Minister. After

due deliberations and making meaningful consultation, the Chief Minister of the State is free to advise a name which has come up for consideration among the consultees to the Governor of the State. The advice tendered by the Chief Minister will have primacy and not that of the consultees including the Chief Justice of the High Court."

9. The similar view was expressed in para No.138 which reads as follows:-

"138. I do not think it necessary to circumscribe the manner of consultation. The Chief Minister may consult the other constitutional authorities collectively or in groups or even individually—this hardly matters as long as there is meaningful and effective consultation. Similarly, I do not think it necessary to restrict the mode of consultation. It may be in a meeting or through correspondence. Today, with available technology, consultation may even be through a video link. The form of consultation or the venue of consultation is not important—what is important is the substance of the consultation.

The matter has to be looked at pragmatically and not semantically. It is important, as held by the High Court, that no constitutional authority is kept in the dark about the name of any candidate under consideration and each constitutional authority mentioned in Section 3(2)(b) of the Act must know the recommendation made by one another for appointment as an Upa-Lokayukta. In addition, they must have before them (as Fazal Ali, J. concluded in S.P. Gupta) full and identical facts. As long as these basic requirements are met, "consultation" could be said to have taken place."

10. It was further reiterated in para No.144 as follows:-

"144. 'Consultation' for the purposes of Section 3(2)(b) of the Act does not and cannot postulate concurrence or consent. This is quite obvious given the large number of constitutional authorities involved in the consultation process. There is always a possibility of an absence of agreement on any one single person being recommended for

appointment as an Upa-Lokayukta, as has actually happened in the present case. In such a situation, it is ultimately the decision of the Chief Minister what advice to tender to the Governor, since he alone has to take the final call."

The sum and substance in short is that each one of the consultees should be aware of the names suggested by one another. None of the consultees can be kept in the dark with regard to the name suggested by the other. Each one of the consultees are entitled to suggest their own name. When a number of names have been suggested by each one of the consultees, it is the right of the Chief Minister to recommend the name of his choice. That is what the Hon'ble Supreme Court have held in para-145 of the Judgment, which reads as follows:-

11. The Supreme Court held at para No.145 as follows:-

"145. Can the Chief Minister advise the Governor to appoint a person not

recommended by any of the constitutional authorities? I see no reason why he cannot, as long as he consults them-the "consultation" being in the manner postulated above. The Chief Minister can recommend a completely different person, other than any of those recommended by any of the constitutional authorities as long as he does not keep them in the dark about the name of the candidate and there is a full and complete disclosure of all relevant facts. In M.M.Gupta v. State of J & K this Court explained "consultation" in the matter of juridical appointments in the following words (which equally apply to the present case): (SCC p.437, para 32);"

But this can be done only on an established fact that the names as suggested by each one of the consultees is made known to each and every other consultees. That none of the consultees can be kept in the dark of any name suggested.

12. In this regard, it is relevant to notice the facts involved in the aforesaid Judgment in Chandrashekarai's

case. Each of the consultees had recommended various names. Thereafter, Justice Chandrashekaraiiah was appointed as Upa-Lokayukta. The name of Justice Chandrashekaraiiah was not disclosed to the Hon'ble Chief Justice, as was evident from the records. Therefore, the Hon'ble Supreme Court went at length to state that even though the Chief Minister has primacy in the question of appointment, the names suggested by each one of the consultees should necessarily be circulated among all the consultees. Therefore, the appointment as made in Justice Chandrashekaraiiah's case was set aside since the name of Justice Chandrashekaraiiah was not placed before the Hon'ble Chief Justice. The Hon'ble Chief Justice came to know of his appointment only after his appointment.

13. However, the facts herein are quite opposite. Four out of the five consultees have recommended the name of respondent No.4. The recommendation of respondent No.4 was placed before the Hon'ble Chief Justice. The recommendation of Hon'ble Chief Justice was

also placed for consideration before the four consultees. Therefore, each one of the consultees were aware of the name of respondent No.4. Therefore, we find that this contention as raised by the learned counsel for the petitioner cannot be accepted. None of the consultees were kept in the dark of any of the names proposed by any of the consultees. This amounts to an effective consultation. Therefore, the facts indicate that there an effective consultation that has taken place in law.

14. The material on record indicates that the name as suggested by each of the consultees was forwarded to the Hon'ble Chief Justice. The name suggested by the Hon'ble Chief Justice was forwarded to each one of the consultees. These facts are undisputed. Thereafter the appointment took place. Hence, the requirement of law as enunciated by the Hon'ble Supreme Court in Justice Chandrashekaraiah's case has since stood complied. It is not that the name of respondent No.4 was kept in the dark. It is not the case that any one of the consultees,

were not aware of the name being suggested. Therefore, it is a fact that each one of the consultees was aware of the name of respondent No.4 being suggested.

15. The further contention of the petitioners counsel is based on the letter of the Hon'ble Chief Justice dated 14-11-2019. Therein the Hon'ble Chief Justice having acknowledged the letter of the Chief Minister dated 12-11-2019 which indicated the name suggested by the four consultees and also that the four consultees were told of the name suggested by the Hon'ble Chief Justice, the Hon'ble Chief Justice reiterates the earlier letter written by him on 22-06-2019 vide Annexure-D. It was extracted in that letter. It is stated as follows:-

"There is no material placed before me by the State Government warranting the change of the recommendation earlier made by me and my learned predecessor. Hence, I maintain the recommendation.

Therefore, I am unable to concur with the recommendation made known to me by your aforesaid letter."

The argument of the petitioner stems from this letter. He contends that there is no material placed before the Hon'ble Chief Justice with regard to respondent No.4 that could enable the Hon'ble Chief Justice to take a decision. We are unable to accept such a reasoning. What is stated in the letter dated 14-11-2019 vide Annexure-F, is that there is no material to change the recommendation made earlier. The earlier recommendation made by the Hon'ble Chief Justice is that of Hon'ble Mr.Justice A.N.Venugopala Gowda. The recommendation made by the consultees is that of respondent No.4. Therefore, whether there is any material or not to change the earlier recommendation, has no nexus with the recommendation made by the remaining four consultees. Secondly, the Hon'ble Chief Justice maintains the recommendation made by him which means that the name recommended by him

to the Chief Minister on the earlier occasion is reiterated. Thirdly, the Hon'ble Chief Justice states that he is unable to concur with the recommendation made known to him by the aforesaid letter dated 12-11-2019, in terms whereof it was communicated to the Hon'ble Chief Justice that four of the consultees have recommended the name of Hon'ble Justice Bhimanagouda Sangnanagouda Patil. That the recommendation of the Hon'ble Chief Justice recommending the name of Hon'ble Shri Justice A.N.Venugopala Gowda, has also been brought to the notice of the above four authorities. Therefore, all these facts were placed before the Hon'ble Chief Justice for his consideration. The Hon'ble Chief Justice having understood the said communication in letter and spirit has reiterated his recommendation and has stated that he is unable to concur with the recommendations made known to him. There is no reference at all by the Hon'ble Chief Justice with regard to an ineffective consultation. It has therefore to be inferred that the consultation made is to the satisfaction of the Hon'ble Chief Justice. Otherwise, he

would have said so. Furthermore, there is nothing in the letter that suggests that the Hon'ble Chief Justice wanted more material about respondent No.4. There is no mention or an indication about it. In fact the reading of the letter would indicate that the Hon'ble Chief Justice was aware of the candidature of respondent No.4. Therefore, he has decided that he shall not concur with the recommendations made by the consultees. It is the decision taken by him which cannot be called in question. The contention of the petitioner's counsel that there is an absence of material before the Hon'ble Chief Justice is unfounded. We have examined the letter and we do not find anything that would indicate lack of an effective consultation or otherwise. As held in para 144 of the Judgment in the case of JUSTICE CHANDRASHEKARAI AH (RETIRED) vs. JANEKERE C.KRISHNA AND OTHERS reported in (2013) 3 SCC 117, '*consultation*' for the purpose of Section 3(2)(b) of the Act does not and cannot postulate concurrence or consent
XXXX.

For all the aforesaid reasons, we do not find any merit in this petition. Consequently, the petition being devoid of merit, is dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

Rsk/-