IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF DECEMBER, 2025

BEFORE

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

CRIMINAL PETITION NO.11571 OF 2025
(482(Cr.PC)/528(BNSS))
CONNECTED WITH
CRIMINAL PETITION NO.11573 OF 2025
(482(Cr.PC)/528(BNSS))

IN CRL.P.NO.11571/2025:

BETWEEN:

1 . SRI MAHANTESH BILAGI
S/O GURUBASSAPPA,
AGED ABOUT 51 YEARS,
FORMER MANAGING DIRECTOR,
B.E.S.C.O.M
PRESENTLY MANAGING DIRECTOR OF
KARNATAKA STATE MINERALS
CORPORATION LIMITED,
HAVING OFFICE AT 5TH FLOOR,
'A' BLOCK,
TTMC BUILDING,
B.M.T.C, SHANTINAGAR,
BENGALURU- 560 027.

2 . SRI. RAMESH H.J.,
S/O HANUMANTAPPA V
AGED 58 YEARS
DIRECTOR TECHNICAL B.E.S.C.O.M

HAVING OFFICE AT B.E.S.C.O.M
CORPORATION OFFICE,
K.R. CIRCLE,
BENGALURU-560 001.

...PETITIONERS

(BY SRI VIKRAM S. HUILGOL, SENIOR ADVOCATE FOR SMT. LEELA P. DEVADIGA, AND SRI KARTHIK N., ADVOCATES)

AND:

1 . THE STATE OF KARNATAKA
BY LOKAYUKTHA POLICE,
REP BY SPECIAL PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BANGALORE-560 001.

2. DR. ASHWATHNARAYAN C.N.
S/O T.K. NARAYANAPPA
AGED ABOUT 57 YEARS
MEMBER OF LEGISLATIVE ASSEMBLY
MALLESHWARAM CONSTITUENCY
RESIDING AT NO.87,
6TH CROSS
2ND MAIN, 1ST BLOCK
RMV 2ND STAGE
ASHWATH NAGAR
BANGALORE-560 094.

3. S.R. VISHWANATH
S/O LATE RAMAIAH
AGED ABOUT 63 YEARS
MEMBER OF LEGISLATIVE ASSEMBLY
YELAHANKA CONSTITUENCY
RESIDING AT NO.14/1,
SINGANAYAKANAHALLI

YELAHANKA HOBLI
BANGALORE (NORTH)-560 064.

4 . DHEERAJ MUNIRAJ,
MEMBER OF LEGISLATIVE ASSEMBLY,
DODDABALLAPURA CONSTITUENCY,
RESIDING AT ANJANADRI,
ARKAVATHIBADAVANE,
D CROSS,
DODDABALLAPUR,
BANGALORE-561 203.

... RESPONDENTS

(BY SMT. VENKATESH S. ARBATTI, ADVOCATE FOR R.1;
SMT. LAKSHMY IYENGAR, SENIOR ADVOCATE FOR
SRI C. KARTHIK, ADVOCATE FOR R.2 TO R.4.)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS), 2023, PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN PCR NO.24/2025, PENDING ON THE FILE OF THE HON'BLE ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE (CCH-82), BENGALURU, INCLUDING THE PRIVATE COMPLAINT DATED 21.04.2025 AND THE ORDER DATED 23.07.2025 PASSED UNDER SECTION 175(4) OF THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023, AS BEING ILLEGAL, ARBITRARY, AND AN ABUSE OF PROCESS OF LAW, IN THE INTEREST OF JUSTICE AND EQUITY.

IN CRL.P.NO.11573/2025:

BETWEEN:

1 . SRI K J GEORGE
MINISTER OF ENERGY
GOVERNMENT OF KARNATAKA
ALSO, CHAIRMAN OF B.E.S.C.O.M
S/O LATE K C JOSEPH
AGED ABOUT 76 YEARS

HAVING OFFICE AT ROOM NO.317-317A,
3RD FLOOR,
VIDHANA SOUDHA
DR. B.R. AMBEDKAR STREET
BENGALURU-560 001.

...PETITIONER

(BY SRI. K.N. PHANINDRA, SENIOR ADVOCATE FOR
SRI SHATHABISH SHIVANNA,
SRI SAMRUDA SURAJ HEGDE AND
SRI ABHISHEK J., ADVOCATES)

AND:

1 . STATE OF KARNATAKA
BY KARNATAKA LOKAYUKTA
BENGALURU
REPRESENTED BY THE SPP OFFICE,
HIGH COURT OF KARNATAKA,
BANGALORE-560 001.

2 . DR. ASHWATHNARAYAN C.N.
AGED ABOUT 57 YEARS,
S/O. T K NARAYANAPPA
MEMBER OF LEGISLATIVE ASSEMBLY,
MALLESHWARAM CONSTITUENCY,
RESIDING AT NO.87,
6TH CROSS, 2ND MAIN,
1ST BLOCK,
RMV 2ND STAGE,
ASHWATH NAGAR,
BANGALORE-560 094.

3 . S.R. VISHWANATH
AGED ABOUT 63 YEARS,
S/O. LATE RAMAIAH
MEMBER OF LEGISLATIVE ASSEMBLY,
YELAHANKA CONSTITUENCY,
RESIDING AT NO.14/1,

SINGANAYAKANAHALLI,
YELAHANKA HOBLI,
BANGALORE (NORTH)-560 064.

4 . DHEERAJ MUNIRAJ
AGED ABOUT 33 YEARS,
S/O. P MUNIRAJ
MEMBER OF LEGISLATIVE ASSEMBLY,
DODDABALLAPURA CONSTITUENCY,
RESIDING AT ANJANADRI,
ARKAVATHI BADAVANE,
D CROSS, DODDABALLAPUR,
BANGALORE DISTRICT-561 203.

...RESPONDENTS

(BY SRI. VENKATESH S. ARABATTI, ADVOCATE FOR R.1;
SMT. LAKSHMY IYENGAR, SENIOR ADVOCATE FOR
SRI C. KARTHIK, ADVOCATE FOR R.2 TO R.4.)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS), 2023, PRAYING TO QUASH THE PRIVATE COMPLAINT DATED 17.07.2025 IN P.C.R.NO.24/25 FOR OFFENCES P/U/S.314, 316 AND 61 OF THE BNS, 2023 AND SECTIONS 13(1)(a) AND 13(1)(b) OF THE PREVENTION OF CORRUPTION ACT (AMENDED 2018) PENDING ON THE FILE OF THE HON'BLE ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, (SPECIAL COURT EXCLUSIVELY TO DEAL WITH THE CRIMINAL CASES RELATED TO ELECTED MPS./MLAS IN THE STATE OF KARNATAKA) (CCH-82), ETC.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 05.11.2025 AND COMING ON FOR PRONOUNCEMENT OF ORDERS, THROUGH PHYSICAL HEARING/VIDEO CONFERENCING THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE M.I.ARUN

CAV ORDER

1. Aggrieved by the order dated 23.07.2025 passed in PCR No.Nil of 2025 (now numbered as PCR No.24/2025) by the LXXXI Additional City Civil and Sessions Judge, Bengaluru (CCH 82), accused No.1 has preferred Crl.P.No.11573/2025 and accused Nos.3 and 4 have preferred Crl.P.No.11571/2025.

2. For the sake of convenience, the parties are referred to as per their status before the trial Court.

3. Accused No.1 is the Energy Minister for the State of Karnataka and Chairman of Bengaluru Electricity Supply Company Limited (BESCOM). Accused No.3 was the Managing Director of BESCOM and accused No.4 was a Director of BESCOM. Petitioners are Members of Legislative Assembly from the opposition party in the State of Karnataka.

4. BESCOM invited tender for selection of AMI Common Service Provider for Sale of Smart Meters to prospective consumers in BESCOM Jurisdiction on contract award basis in retail outlets for arranging power supply to new connections (including temporary installations) for a period of 5 years and Supply, Implementation, Commissioning & Maintenance of the common AMI System for Smart meters for a period of 10 years in all the ESCOMs of Karnataka. The same has been awarded in favour of one M/s.Rajashree Electricals Private Limited, Davangere. On the allegations that a criminal conspiracy was hatched at the behest of accused No.1 along with the other accused to favour the successful bidder in order to unlawfully enrich accused No.1, a private complaint has been lodged by the complainants by way of PCR No.Nil/2025, before the Special Court nominated to deal with criminal cases related to former and elected

MP's / MLA's in the State of Karnataka. Before filing of the said private complaint, the complainants have approached the Lokayuktha Police and also sought permission from His Excellency, the Governor of the State of Karnataka to launch prosecution against the accused.

5. It is alleged that the entire tender process has been designed so that the contract is awarded in favour of the successful bidder (M/s.Rajashree Electricals Private Limited). It is alleged that there has been an illegality committed in framing eligibility methods of valuation and terms and conditions in the tender document. It is also alleged that there is a illegality in evaluation of bids. Illegality is also alleged in the final decision taken by the BESCOM in awarding the contract in favour of the successful bidder and also in incorporating the agreed terms and conditions in the contract.

6. The allegations against the accused made in the complaint are as follows:-

> *"8. The complainants submit that, it is to be noted that the following infractions were carried out by BESCOM's various committees and officials in the B.E.S.C.O.M smart meter tender to prop-up the prima facie shell of the criminal conspiracy M/s. Rajashree Electrical Davangere and keep other vendors out of the bid:-*
>
> ***I.*** *The Tender value was reduced to Rs.997 Crores even though the actual value was more than Rs.5,296 Crores over a 10-year period.*
>
> ***II.*** *The Estimated Annual Payment was reduced to Rs. 107.11 Crores even though the actual value was more than Rs.1,059 Crores.*
>
> ***III.*** *Illegally & subjectively allowing and disallowing the use of credentials of sub-contracting to supplement the qualifying credentials or lack of it of the prime contractor. To ensure that other Nationally and internationally capable firms would not qualify to participate in the tender thereby, foregoing the need for Global Tenders to ensure bids were restricted and outcome of the bid was certain.*

IV. *Deleting the Bid Capacity clause of K.W-4 format which would have precluded M/s. Rajashree Electrical Davangere and M/s VR Patil VividhVidyuthNirman Pvt. Ltd.*

V. *Reducing the previous experience of supply of meters to Rs.53.55 Crores instead of Rs.2,648 Crores so as to specifically M/s Rajashree who precisely met with 53.55 Cr criteria.*

VI. *Reducing the Earnest Money Deposit & Performance Security to Rs.10.06 Crores and Rs.4 Crores instead of Rs.52.96 Crores and Rs.264.8 Crores to provide pecuniary benefit to the M/s Rajashree Electrical Davangere.*

VII. *Not disqualifying the bid of M/s. Rajashree Electrical Davangere for utilizing the credentials of a blacklisted company. M/s B.C.I.T.S Pvt. Ltd, who was collaborated with for the said project. Further, it is to be noted that M/s. B.C.I.T.S Pvt. was disqualified for fraudulently reporting ghost (connections that do not exist) connections for the Utility in Uttar Pradesh. M/s B.C.I.T.S was disqualified for period of two years from 06.01.2023 to 06.01.2025. The copy of order passed by PoorvanchalVidyuthVitharanaNigham limited* *dated 06.01.2023 is produced as* ***<u>Document No.9.</u>***

VIII. *Illegally negotiating and renegotiating with M/s. Rajashree Electrical Davangere even though their bid was above 10% of the estimated value of tender prescribed by BESCOM in direct contravention of K.T.P.P and Norms which state that bids above 10% of the estimated value are to be deemed substantially high and retendered. Any bid that is 10 percent of estimated value would have to be cancelled as per the guidelines issued by the government of Karnataka bearing Circular No:-P.W.D 1359 SO/FC 2001 (P-2). The copy of government of Karnataka Circular No:- P.W.D 1359 SO/FC 2001 (P-2) is produced as* ***<u>Document No.10.</u>***

IX. *Illegally accepting the substantially high bids of M/s. Rajashree Electrical Davangere.*

X. *Illegally enforcing new consumers to adopt smart meters as mandatory by issuing Operational guidelines by B.E.S.C.O.M, which is contrary to K.E.R.C (Prepaid Smart Meeting) Regulations 2024, since as per the said regulations Smart Meter was optional to all new consumers. Further, not taking approval of K.E.R.C under the KERC [Smart*

Grid] Regulations 2015 with public consultations prior to taking project ahead. The copy of K.E.R.C (Prepaid Smart Meetings) Regulations 2024 is produced as ***Document No.11.*** *The copy of K.E.R.C (Smart Grid) Regulations, 2015 is produced as* ***Document No.12.*** *The copy of the Operational guidelines issued by the B.E.S.C.O.M dated:-13/2/2025 is produced herewith as* ***Document No.13.***

XI*. Deliberately not presenting the project to the Council of Ministers as required under the First Schedule of the Transaction of Business Rules 1977, instead utilizing residual powers of the Energy Minister, Government of Karnataka to order other Electricity Supply Companies of Karnataka to adopt the ridiculous rates deliberately calculated for the B.E.S.C.O.M Smart Meter Tender. The copy of Karnataka Government Transaction of Business Rules 1977 is produced as* ***Document No.14.***

XII*. If the R.D.S.S scheme is to be adopted in Karnataka, due to the decision of Shri KJ George in the meeting taken place at K.R.E.D.L. on 14.10.2024 as stated in the 132nd Board Resolution, customer (who convert the old electro-mechanical/electronic meters to smart meter under RDSS scheme)* *of E.S.C.O.M.s of Karnataka may have to pay Rs.75/118 per meter month to adopt the Common A.M.I.S.P system deployed by M/s. Rajashree Electrical Davangere in this BESCOM SMART METER tender. It is to be noted that common A.M.I.S.P systems across states is not mandated by the Central Government. This would mean that the consumers would have to pay the Smart Meter supplier for supply of meter and additionally M/s. Rajashree Electrical Davangere for integration of meter in the common billing system of Karnataka. This is largely due to decision taken by Shri K.J. George."*

*"9. The complainants submit that actions as described in the paragraphs 9.*I *to 9.XII prima facie point to a criminal conspiracy to enable illegal and unjust enrichment of the prima facie shell M/s Rajashree Electrical Davangere, which prima facie look like a front for Mr. KJ George and other officials. Further, the mala fide intent shown in the decision making matrix of the various committees and officials of B.E.S.C.O.M with blatant disregard to the K.T.P.P norms, fiduciary responsibility to the public at large (who are the shareholders of the Company) under the Companies Act 2013 and the public trust doctrine as framed by the*

Supreme Court prima facie points to the fact that the entire tender exercise was carried out to prop up a prima facie shell company (M/s. RajashreeElectrical Davangere) who carries out no technical work in the tender, to award a contract beyond his means to ensure the completely masked additional margin so joined may be prima facie shared / spread across all stakeholders involved in the criminal conspiracy at the cost of the customers of B.E.S.C.O.M/E.S.C.O.M's across Karnataka. Therefore, if investigation is made by Lokayukta, the nexus between the Minister and M/s. Rajashree Electrical Davangere can be found out, and transactions involving the interest of Minister with M/s M/s. Rajashree Electrical Davangere also can be discovered."

"14. The complainants submit that as per Government order dated 14.10.2008 bearing No.FD 4 PCL 2008, and 19.07.2014 bearing No.FD 480 EXP-12/2014 produced at Document No.1 and 2, the requirement for Earnest Money Deposit & performance bank guarantee is as follows:-

> *a) The Earnest Money Deposit is to be 1% of Estimated Value of Work as per KW-4 format. The Estimated value of the Project is approximately*

Rs.5,296 Crores. Therefore, the EMD for the Smart Meter tender should have been Rs.52.96 Crores. However, BESCOM in its tender has proposed EMD of only Rs.10.06 Crores. This is a gross violation of the KTPP Act and Rules therein to ensure M/s. Rajashree Electrical Davangere would qualify for a tender which was beyond his capacity to apply for.

b) Further the Performance Security as per KW-4 format is 5% of the Contract Price. The Contract price is Rs.5,296 Crores approximately. 5% of Rs.5,296 Crores i.e. Rs.264.8 Crores should have the value of Performance Bank Guarantee as per KW-4 format. For the Smart Meter Tender Performance Security was illegally reduced to Rs.4 Crores to benefit M/s. Rajashree Electrical Davangere illegally. Had the KW-4 norms been followed the Performance Security and Earnest Money Deposit would have been significantly more than the quantum prescribed in the B.E.S.C.O.M Smart Meter Tender. This was done by the Director (Technical) B.E.S.C.O.M, Managing Director, B.E.S.C.O.M and

Board Members in violation of the KTPP guidelines to ensure illegally enrichment by award of contract to M/s. Rajashree Electrical Davangere."

"15. The complainants submit that B.E.S.C.O.M has not called for a global tender and has opted that only bidders with an Electrical Class 1 License or Super Grade License issued by the Government of Karnataka and those who have successfully completed as prime contractor at least one project involving Supply, installation and commissioning of Single phase/Three phase WC / Three phase LT CT / Three phase HT consumer metering work of value not less than 50% of the estimated annual payment [the reduced Rs. 107 Crores and not Rs. 2648 Crores] under this contract in the previous five financial years in any ESCOMS/DISCOMs.. It is to be noted that in the KW-4 format, the bidder or his sub-contractor credentials can be used to be comply to this clause. However, B.E.S.C.O.M disallowed sub-contractor credentials to be used to meet qualifying requirement to ensure only the final two participants should be

the only bidders. This was done to ensure other national and internationally reputed companies with smart meter supply experience should not be able to participate in the B.E.S.C.O.M bid, as the bidders who have supplied this quantum of smart meters would not have Class-1 Electrical License or Super Grade License issued by the Government of Karnataka as this is the first smart meter supply in the State of Karnataka. However, including such a mandatory clause, ensured that other suppliers or vendors who would have supplied /installed that quantum of smart meters could not participate in the bid as they were not Class-1 Electrical / Super Grade Licensed Contractor. Further, it is noted that the Karnataka Works 4 contract has stated that 50% of entire value of the contract the electrical works is the quantum of works needed to be completed to qualify for the tender. The value of the electrical works is Rs. 5,296 Crores approximately. Therefore, the single order required by the Bidder for the Smart Meter Tender should have been Rs. 2,648 Crores. Instead to ensure

M/s. Rajashree Electrical Davangere qualify for this bid, BESCOM has amended the qualifying requirement to 50% of the estimated annual payment illegally. This was meant to illegally favour M/s. Rajashree Electrical Davangere to qualify for a tender beyond his capacity."

"16. The Complainants submits that as per KW-4 format, the bidder should have mandatory completed at least one similar work of 80% of the cost of the work costing more than Rs.100 Lakh. Therefore, for the BESCOM smart meter the bidder should have done one work of Rs.4,236.8 Crores approximately to qualify for this bid. However, the Tender clause was illegally modified to state that 80% of the meter quantity should have been supplied by the Bidder. This is a clear violation of KW-4 to illegally suite M/s. Rajashree Electrical Davangere who had a supply of meters of 3,20,000 meters only. The value of the tender supply was below Rs.200 Crores and he would not have ordinarily qualified for this tender had KW-4 format been followed by BESCOM."

"17. The complainant submits thatDraft Board Resolution for 132nd Board Meeting of 14th of B.E.S.C.O.M that M/s. Rajashree Electrical Davangere has quoted 18% above Estimated Value of B.E.S.C.O.M and negotiations have been carried out to reduce quoted prices in the bid. As per guidelines issued by Karnataka Government for conducting negotiation, it is stated that negotiations is to be avoided in substantially high bids, wherein substantially high bids are considered bids above 10% of estimated value. Further, bids which are substantially high should be rejected at first choice and retendered. In the present case, the bids were negotiated further, as can be seen in the price variation between the Board Resolution prices listed, this is highly irregular and should be investigated. The Board of Directors illegally allowed for negotiations contrary to Government of Karnataka order bearing No:-PWD 1359 SO/FC 2001 dated 3rd December 2002 to retender bids to tender which are 10% higher than estimated costs."

"20. The Chairman of the Board of B.E.S.C.O.M directed the other ESCOMs of Karnataka to procure the meters at substantially high rates discovered by B.E.S.C.O.M in 132nd Board Meeting vide the use of his powers as Energy Minister, Government of Karnataka under the Transaction of Business Rules 1977. The Decision by Energy Minister directing other E.S.C.O.M's across Karnataka State to award contract directly to M/s Rajashree Electricals Davangere without calling for tender, is in direct violation of K.T.P.P Act. In regular course of the Transaction of Business Rules 1977 such a policy decision had to referred to the Council of Ministers for approval prior to resolving to undertake such a major change in policy decision by not allowing the other E.S.C.O.Ms to call tenders of their own, i.e., for selection of their A.M.I.S.P is blatant violation of the administrative norms, it was done intentionally by the Hon'ble Energy Minister, GOK to ensure M/s. Rajashree Electrical was able to quote high rates to a tender that he was the only one who could qualify for the same. Further, the Board of BESCOM is complicit in

accepting substantially high bids while illegally authorizing the Managing Director, B.E.S.C.O.M to negotiate with M/s. Rajashree Electrical Davangere which was contrary to law. Additionally, the Chairman of the Board of B.E.S.O.M Sri. K.J. George and other members such as Sri Gaurav Gupta Additional Chief Secretary Energy Department. Sri Mahantesh Bilagi, Former B.E.S.C.O.M Managing Director Sri. Ramesh H.G, B.E.S.C.O.M Director Technical, Balaji B.E.S.C.O. Deputy General Manager has illegally used their administrative powers to enforce the other ESCOMs of Karnataka to adopt these rates vide the Board Resolution of BESCOM in direct contravention of K.T.P.P guidelines for the illegal enrichment of M/s. Rajashree Electrical Davangere through this criminal conspiracy."

7. Based on the aforementioned allegations, the complainants have sought to prosecute the accused for the offences punishable under Sections 314, 316 and 61 of the Bharatiya Nyaya Sanhita, 2023 read with

Sections 13(1)(a) and 13(1) (b) of the Prevention of Corruption Act, 1988.

8. Based on the allegations made in the complaint accompanied by an affidavit as contemplated under Section 173(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS'), and after hearing the complainants, the trial Court framed the following points for consideration and has answered the same as follows:-

> *"4. Heard the learned Senior Counsel and perused the records. The points that would arise for my consideration are:*
>
> > *1. Whether complainants have made out grounds to call for Report from the competent authorities:*
> >
> > *2. What order?*
>
> *5. My finding to the aforesaid points are as follows:*
>
> > ***Point No.1: In the Affirmative***
> >
> > ***Point No.2: As per final orders."***

And has passed the following order:-

ORDER

"Acting under Sec.175(4) of Bharatiya Nagarik Suraksha Sanhita 2023, it would be appropriate to call for Report from the Superintendent of Police, Karnataka Lokayuktha, Bengaluru, to file his Report on or before the next date of hearing.

Office is hereby directed to register the complaint as PCR and shall furnish necessary intimation to the concerned Lokayuktha Authorities with respect to the Report called by this Court."

9. Aggrieved by the same, the present criminal petitions are filed by accused Nos.1, 3 and 4.

10. The case of accused Nos.1, 3 and 4 is that the allegations made in the complaint are all false and frivolous and are not supported by any material. It is submitted that the trial Court has failed to hear accused Nos.1, 3 and 4 before passing the impugned order. It is also submitted that the trial Court has passed the impugned order in violation of Section 17A

of the Prevention of Corruption Act, 1988 (for short 'the P.C. Act') and also in violation of the procedure laid down under Section 175(4) of BNSS. It is further submitted that, even otherwise, no reliable or believable material is produced along with the complaint. The trial Court, without applying its mind, only based upon the wild allegations made against the accused, has passed the impugned order erroneously. It is also further submitted that even allegations made in the complaint do not constitute any offence as contemplated under the Prevention of Corruption Act, 1988 or the Bharatiya Nagarik Suraksha Sanhita, 2023.

11. Based on the submissions made by accused Nos.1, 3 and 4, the points that arise for consideration are:-

i. Whether the trial Court has committed any procedural illegality while passing the impugned order?

ii. Even presuming that there is no procedural illegality as alleged, whether the allegation made in the complaint constitute any offence under the P.C. Act or BNSS as alleged?

iii. Whether the material provided along with the complaint supports the allegations made in the complaint and whether the trial Court was required to examine the same in detail before passing the impugned order and did it erred in not doing so?

12. Admittedly, the accused Nos.1, 3 and 4 are public servants, and the law contemplates certain safeguards for the actions of the public servant, which they have done in discharge of their official duties as public servants.

13. Section 17A of the P.C. Act reads as under:-

> *"**17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.-**No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to*

have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval-

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

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

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

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

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

14. Section 175(3) and (4) of BNSS reads as under:-

"175. Police officer's power to investigate cognizable case.-

(1) xxx

(2) xxx

(3) Any Magistrate empowered under section 210 may, after considering the application supported by an affidavit made under sub-section (4) of section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.

(4) Any Magistrate empowered under section 210, may, upon receiving a

> *complaint against a public servant arising in course of the discharge of his official duties, order investigation, subject to-*
>
> *(a) receiving a report containing facts and circumstances of the incident from the officer superior to him; and*
>
> *(b) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged."*

15. The case of accused Nos.1, 3 and 4 is that the impugned order has the effect of ordering an enquiry or investigation in relation to an offence relatable to recommendations made or decisions taken by accused Nos.1, 3 and 4 (public servants) in discharge of their official functions and duties without obtaining the necessary sanction as contemplated under Section 17A of the P.C. Act. It is submitted that accused No.1 is the Energy Minister of the State of Karnataka and the offences alleged pertain to the decision taken by him while discharging his duties as a Minister and an

enquiry or investigation could not have been ordered without there being a prior sanction obtained from His Excellency the Governor. It is submitted that the impugned order is passed under Section 175(4) of BNSS and even as per the said Section, an order under Section 175(4) could not have been passed by the trial Court without obtaining a report from His Excellency the Governor. It is submitted that the trial Court could not have ordered the Lokayuktha Police to submit a report.

16. Per contra, learned Senior counsel appearing for the complainants submits that the impugned order is not passed under Section 175(4) of BNSS, but under Section 175(3) of BNSS. Reliance is placed on the judgment of the Apex Court in the case of ***N.MANI v. SANGEETHA THEATRE AND OTHERS*** reported in ***(2004) 12 SCC 278*** wherein in para 9, it has been held as under:-

> *"9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law."*

17. Based on the aforementioned judgment, it is contended that mentioning of Section 175(4) of BNSS in the impugned order is a typographical error and it has to be read as Section 175(3) and it cannot be fatal to the order passed by the trial Court.

18. It is submitted that when the jurisdictional Police refused to receive information provided to them in respect of a cognizable offence and act on it, the complainant has the option to file a complaint before the jurisdictional Magistrate under Section 173(4) of BNSS and in the instant case, as the Lokayuktha Police refused to register the complaint, the complainants have been forced to approach the Special Court by filing a PCR as contemplated under Section 173(4) of

BNSS. Upon receipt of the complaint, it is submitted that the Magistrate has to initially proceed under Section 175(3) of BNSS, wherein the Magistrate after considering the application supported by an affidavit and after making such enquiry, as he thinks necessary, he may call for a report from the jurisdictional Police and after submission is made to him in this regard by the Police Officer, if the accused is a Public Servant then follow the procedure as contemplated under Section 175(4) of BNSS. It is submitted in the instant case, after receipt of the complaint, as the allegations made therein and the materials produced along with the complaint constitute an offence under various provisions of the Prevention of Corruption Act, 1988 and the Bharatiya Nagarik Suraksha Sanhita, 2023, the trial Court has directed the Lokayuktha Police to submit a report. It is submitted that there is no error in the same. It is further submitted that by mistake instead of mentioning Section 175(3), Section 175(4) is mentioned in the order portion of the impugned order and the accused taking advantage of it, is trying to confuse the Court by stating that the procedure as contemplated under Section 17A of the P.C. Act as well as Section 175(4) of BNSS has not been followed. It is submitted that the safeguards contemplated under Section 17A of the P.C. Act and Section 175(4) of BNSS comes into effect only after the Lokayuktha Police submit a report and after analyzing the same, the trial Court comes to a conclusion that it is a fit case to proceed with. It is further submitted that by way of impugned order, the trial Court has not taken cognizance of the offence, but has merely called for a police report, to facilitate the Court to take a decision as to whether there is any *prima facie* case in the allegations made by the complainants or not.

19. Thus, under the circumstances, I am of the opinion that the order passed by the trial Court has to be considered as an order passed under Section 175(3)

and not under Section 175(4) of the BNSS. However, the question still remains whether the trial Court under the given peculiar facts and circumstances of the case, should have called for a report from the Lokayuktha Police or rejected the petition at the preliminary stage itself.

20. As can be seen from the allegations made by the complainants against the accused, it pertains to the manner in which the tender process has been conducted and the contract has been awarded in favour of the successful bidder. Under the circumstances, it is required to examine that even presuming the allegations made in the complaint are true regarding the specific instances of infraction alleged in the tender process and the awarding of the contract in favour of the successful bidder, whether they constitute the offences as alleged in the complaint. Only if the same can be answered in the positive then only the trial

Court should have called for a report from the Lokayuktha Police.

21. The case of the complainants is that the incidents of infractions alleged do constitute the offences as alleged in the complaint. Per contra, the submission of the accused is that the acts do not constitute the offences as alleged.

22. In the course of the proceedings the Lokayuktha Police have filed a report in respect of the tender process. It is submitted by the counsel for the Lokayuktha that as per the terms and conditions of the eligibility criteria prescribed in the tender document, there were several eligible persons competent to bid for the contract. However, only three persons made a bid and amongst them, the successful bidder turned out to be L-1 and after negotiation and reducing the rates even further, he has been selected and has been awarded the contract.

23. The aforementioned statement is not disputed either by the complainants or the accused.

24. Perusal of the tender document reveals that it comprises the following:-

> *"The Tender documents comprises of the following:*
>
> - *Detailed Scope of Work.*
> - *Instructions to Bidders.*
> - *General Conditions of Contract.*
> - *Special Conditions of Contract.*
> - *Annexure A - Smart Meters Specifications*
> - *Annexure B - Communications Systems*
> - *Annexure C-Retail Outlets*
> - *Annexure D IT Systems*
> - *Annexure E-NOMC Specifications*
> - *Annexure F - Service Level Agreement*
> - *Annexure G - AMI System Availability*
> - *Annexure H - Terms and Conditions of Payment."*

25. Section 314 of the Bharatiya Nyaya Sanhita, 2023 reads as under:-

> *"**314. Dishonest misappropriation of property.** - Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which shall not be less than six months but which may extend to two years and with fine."*

26. Section 316 of the Bharatiya Nyaya Sanhita, 2023 reads as under:-

> ***"316. Criminal breach of trust.-*** *(1) Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust.*

Explanation 1.—A person, being an employer of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948) shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Illustrations

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Kolkata, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits one lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in illustration (c), not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not

having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

(2) Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

(3) Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(4) Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with

any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(5) Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

27. Section 13(1) (a) and 13(1) (b) of the Prevention of Corruption Act reads as under:-

13. Criminal misconduct by a public servant.— *(1) A public servant is said to commit the offence of criminal misconduct,—*

(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or

(b) if he intentionally enriches himself illicitly during the period of his office."

28. It is not the case of the petitioners that the accused took money at the time of awarding the contract to the successful bidder. But it is their case that the entire tender process was designed to favour the successful bidder and that the contract has been awarded in favour of the successful bidder which is a shell company and front of accused No.1 so that accused No.1 gets unjustly enriched.

29. Admittedly, several persons were eligible to participate in the tender process. It is not that anybody has been illegally disqualified. Further, there were three bidders for the contract. The same has been done transparently. No favour has been shown to the successful bidder in this regard. Allegations of the provisions of the Karnataka Transparency in Public Procurements Act, 1999 (for short 'the KTPP Act') being

violated or any other improper method of tender process and awarding of the contract, may give rise to a civil cause of action, for the concerned parties who were desirous of making a bid for the contract or it can also be a matter of public interest litigation. However, when the bid was invited by all the eligible persons and there were several of them who could have participated and from the persons who have participated, the tender being awarded in favour of the successful bidder, no criminality can be attributed to the accused in the awarding of the contract. It is not the case of the complainants that after finalizing the terms and conditions of the tender document, when the contract was awarded to the successful bidder, the terms and conditions of the tender document have been altered or flouted to favour the successful bidder. Infact, the BESCOM has subsequently negotiated with the successful bidder to the terms more favorably to the BESCOM.

30. Further, Sections 314 and 316 of the Bharatiya Nyaya Sanhita, 2023, does not attribute any dishonest intention on part of the accused at the time of floating the tender document. It can be attracted only thereafter. Even otherwise, as already mentioned above, the manner in which the tender has been floated and the terms and conditions of the contract are mentioned, at the maximum the same can be challenged to be in violation of the KTPP Act, but definitely no criminality can be attributed to the accused.

31. As already mentioned above, after the tender was awarded to the successful bidder, negotiations have taken place and no additional benefit has been given to the successful bidder. Whatever changes have taken place are for the benefit of the State or as a natural consequence of the business transactions, for which no criminality can be attributed to the accused.

32. The trial Court without applying its mind to the allegations in the contract, has called for a report from the Lokayuktha, which in my opinion, is erroneous.

33. During the course of the proceedings, it is submitted that accused No.3 has died.

34. Hence, the following:-

ORDER

i. The proceedings against accused No.3 stands abated.

ii. The criminal petitions are ***allowed***.

iii. Consequently, the proceedings initiated in PCR No-Nil/2025 (presently numbered as PCR No.24/2025) pending on the file of the LXXXI Additional City Civil and Sessions Judge, Bengaluru (CCH 82), against the petitioners herein stands quashed.

iv. Pending interlocutory applications, if any, stand disposed of.

Sd/-
(M.I.ARUN)
JUDGE

VMB