IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF FEBRUARY, 2023

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 7122 OF 2022 (GM-KLA)

BETWEEN:

THE KARNATAKA LOKAYUKTHA,
REPRESENTED BY ITS REGISTRAR,
M.S.BUILDINGS,
DR. B.R.AMBEDKAR ROAD,
BANGALORE-560 001.

...PETITIONER

(BY SRI. VENKATESH S.ARBATTI, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
   UNDER SECRETARY TO GOVERNMENT,
   EDUCATION DEPARTMENT
   (SECONDARY EDUCATION),
   VIDHANASOUDHA,
   BENGALURU-560 001.
2. SRI. CHANDRASHEKAR,

...RESPONDENTS

(BY SRI.M.VINOD KUMAR, AGA FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE GOVERNMENT ORDER DATED 06.09.2021 PASSED BY R-1 VIDE ANNX-A; AND ETC.,

THIS PETITION COMING ON FOR PRILIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner - the Karnataka Lokayukta is before this Court calling in question an order dated 06.09.2021 by which the second respondent is imposed a penalty, which falls short of a recommendation made by the petitioner for imposition of particular penalty.

2. Heard Sri. Venkatesh S. Arbatti, learned counsel appearing for the petitioner and Sri. M. Vinod Kumar, learned AGA appearing for the respondent No1.

3. Facts in brief that leads the petitioner to this Court in the subject petition, as borne out from the pleadings, are as follows:

The second respondent becomes an accused in a criminal case in which he is allegedly caught receiving bribe of Rs.700/- in the year 2009. The criminal proceedings were instituted against the second respondent, which ends up in acquittal on the ground that there was no work pending with the second

respondent for him to demand or accept an amount of Rs.700/- as a bribe.

Simultaneously, the report under Sub-Section 3 of Section 12 of the Karnataka Lokayukta Act, 1984 ('Act' for short) was prepared and furnished to the Government, seeking entrustment of departmental enquiry to the Lokayukta under Rule 14A of the Karnataka Civil Services (CCA) Rules.

The Government in terms of an order dated 22.07.2011, passed an order under Sub-Section 4 Section 12 of the Act, entrusting the enquiry to the hands of the Lokayukta. The enquiry officer nominated by the Lokayukta conducts an enquiry and holds that the allegations against the second respondent are proved and accordingly submits an enquiry report. On the enquiry report, the Lokayukta recommends imposition of penalty of compulsory retirement from service against the second respondent. On receipt of the recommendation of imposition of such penalty, the disciplinary authority after on consideration of the material placed before it, resolves to impose a penalty of reversion in grade of the petitioner instead of compulsory retirement, as was

recommended by the Lokayukta. It is this order that drives the petitioner to this Court in the subject petition.

4. The learned counsel appearing for the petitioner would vehemently contend that once the recommendation is made, the reduction of penalty can only happen in accordance with law. There are no reasons indicated as to why the penalty against the second respondent is reduced to that of reversion from what was recommended i.e. compulsory retirement by the Lokayukta and would submit that the order be quashed and recommendation be accepted.

5. The learned AGA on the other hand would refute the submissions to contend that it is the discretion vested with the disciplinary authority to impose a penalty or otherwise and the petitioner - Lokayukta cannot be considered to be an aggrieved person against the orders passed by the disciplinary authority imposing a particular penalty. He would submit that the reduction in rank is imposed upon the second respondent on the ground that he was honorably acquitted in the criminal case, which Court had held that there was no work pending for the petitioner to demand or accept bribe of Rs.700/- in the year

2009 and therefore, would support the order. He would further contend that the second respondent is not left scot-free but he has been imposed penalty of reversion to a lower grade.

6. I have given my anxious consideration to the submissions made by the respective counsel and have perused the material available on record.

7. The statutory frame work of the Lokayukta Act requires to be considered to consider the submission of the learned counsel appearing for the petitioner. The very issue fell for consideration at the hands of this Court in W.P.No.12733/2021 which came to be disposed on 25.01.2022, this Court has held as follows:

> *"8. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record. In furtherance whereof, the only issue in the subject writ petition that calls for my consideration is,*
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> > *"Whether the Lokayukta can be considered to be an aggrieved person to knock the doors of this Court under Article 226 of the Constitution of India challenging the decision of the Cabinet?"*
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> *The afore-narrated facts as to the genesis of the present writ petition is not in dispute and need not be reiterated. To consider the issue that has arisen in the subject lis, it is germane to notice the provisions of the Act, more particularly, Section 12 of the Act, which is*

the nucleus of the lis. Section 12 of the Act reads as follows:

> *"**12. Reports of Lokayukta, etc.**- (1) If, after investigation of any action involving a grievance has been made, the Lokayukta or an Upalokayukta is satisfied that such action has resulted in injustice or undue hardship to the complainant or to any other person, the Lokayukta or an Upalokayukta shall, by a report in writing, recommend to the competent authority concerned that such injustice or hardship shall be remedied or redressed in such manner and within such time as may be specified in the report.*
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> *(2) The competent authority to whom a report is sent under sub-section (1) shall, within one month of the expiry of the period specified in the report, intimate or cause to be intimated to the Lokayukta or the Upalokayukta the action taken on the report.*
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> ***(3) If, after investigation of any action involving an allegation has been made, the Lokayukta or an Upalokayukta is satisfied that such allegation is substantiated either wholly or partly, he shall by report in writing communicate his findings and recommendations along with the relevant documents, materials and other evidence to the competent authority.***
>
> ***(4) The Competent authority shall examine the report forwarded to it under subsection (3) and within three months of the date of receipt of the report, intimate or cause to be intimated to the Lokayukta or the Upalokayukta the action taken or proposed to be taken on the basis of the report.***
>
> ***(5) If the Lokayukta or the Upalokayukta is satisfied with the action taken or proposed to be taken on his***

recommendations or findings referred to in sub-sections (1) and (3), he shall close the case under information to the complainant, the public servant and the competent authority concerned; but where he is not so satisfied and if he considers that the case so deserves, he may make a special report upon the case to the Governor and also inform the competent authority concerned and the complainant.

(6) The Lokayukta shall present annually a consolidated report on the performance of his functions and that of the Upalokayukta under this Act to the Governor.

(7) On receipt of the special report under sub-section (5), or the annual report under sub-section (6), the Governor shall cause a copy thereof together with an explanatory memorandum to be laid before each House of the State Legislature.

(8) The Lokayukta or an Upalokayukta may at his discretion make available, from time to time, the substance of cases closed or otherwise disposed of by him which may appear to him to be of general, public, academic or professional interest in such manner and to such persons as he may deem appropriate."

(Emphasis supplied)

Sub-section (1) of Section 12 of the Act vests consideration of a complaint involving a grievance which has resulted injustice or undue hardship to the complainant or any other person and a report to that effect is to be submitted to the competent authority. Sub-section (2) of Section 12 mandates that the competent authority to whom the report is sent under Sub-section (1), within the expiry of one month, intimate or cause to be intimated the action taken on the report submitted under Sub-section (1) of Section

12. These are the provisions which deal with an action to be taken involving a grievance.

9. Sub-section (3) of Section 12 deals with an action on an allegation. It revolves around a complaint involving an allegation and the Lokayukta being satisfied with such allegation, either wholly or partially substantiated, shall by a report in writing communicate its findings and recommendations along with relevant documents, material and other evidence to the competent authority. Sub-section (4) of Section 12 is the duty of the competent authority to examine the report forwarded by the Lokayukta under Sub-section (3) of Section 12 and intimate the action taken within 3 months. Sub-section (5) of Section 12 deals with satisfaction of the Lokayukta. The said provisions permits the Lokayukta to close the case after receipt of the information with regard to action taken on the report submitted both under Sub-sections (1) and (3) of Section 12 and if in the event, he is not satisfied, he may make a special report upon the said case to the Governor and also inform the competent authority concerned and the complainant. Sub-section (7) of Section 12 deals with action of the Governor on receipt of special report under Sub-section (5) or annual report under Sub-section (6) whereby, the Governor is directed to cause a copy thereof together with an explanatory memorandum to be laid before each Houses of the State Legislature. The afore-extracted provision of law is the statutory frame work under which the present lis will have to be considered.

10. A search was conducted in the Office of the 2nd respondent upon which a criminal case came to be registered as the 2nd respondent was in possession of Rs.9,700/- unaccounted cash. Based on the material collected during criminal proceedings, the Lokayukta framed a report under Sub-section (3) of Section 12 of the Act and communicated the same seeking entrustment of departmental enquiry to it against the 2nd respondent. In the case at hand, the role of the competent authority - the State Government begins on receipt of the report from the hands of the Lokayukta. A cabinet note is put up for a decision by the Cabinet

on the report submitted by the Lokayukta. The cabinet by its decision dated 09-01-2019, declines to entrust the enquiry against the 2nd respondent to the hands of the petitioner-Lokayukta. In furtherance of the decision of the Cabinet, a Government Order is issued on 20-03-2019, notifying that the cabinet has decided not to entrust the enquiry against the 2nd respondent to the Lokayukta and closed the proceedings. On issuance of the said Government Order, the Lokayukta knocks the doors of this Court.

11. The issue now is, whether the Lokayukta can challenge the decision of the Cabinet by filing a writ petition before this Court. In other words, can the Lokayukta be considered to be an aggrieved person on the decision of the Cabinet. The statutory frame work afore-extracted clearly mandates certain action to be taken once the report is submitted by the Lokayukta under Sub-section (3) of Section 12 of the Act. The function of the Lokayukta rests at that stage. The next stage where the Lokayukta would again spring into action is, when an order is passed entrusting the enquiry after consideration of the report in terms of Sub-section (4) of Section 12 of the Act. If the enquiry is not entrusted, Sub-section (5) comes into play. Sub-section (5) mandates that in the event, the Lokayukta is not satisfied with non-entrustment of enquiry or closure of proceedings, the only remedy available under the Act is to communicate the same to the Governor and it is the function of the Governor under Sub-section (7) of Section 12 of the Act to place such communication of the Lokayukta before each Houses of the State Legislature along with an explanatory memorandum. This being the statutory frame work, the Lokayukta can hardly be said to be a person aggrieved. No doubt, the Office of the Lokayukta is on a much higher pedestal than that of an Inquiry Officer in a Departmental Inquiry but, it would not mean that the Inquiry Officer shall be permitted to challenge the decision of the Disciplinary Authority, who alone is empowered to act upon the report of the Inquiry Officer. If the report submitted by the Lokayukta under Sub-section (3) of Section 12 is declined to be accepted by the competent authority, who alone has the discretion

either to entrust or not to entrust the enquiry, the Lokayukta cannot be seen to challenge the same invoking the extraordinary discretionary jurisdiction of this Court under Article 226 of the Constitution of India.

12. The phrase 'person aggrieved' has been a subject matter of interpretation in plethora of judgments of the Apex Court right from the case of ***CALCUTTA GAS CO. (PROPRIETARY) VS. STATE OF WEST BENGAL AND ORS[1],*** *at para No.5 has held as follows:*

> ***"5.*** *The first question that falls to be considered is whether the appellant has locus standi to file the petition under Article 226 of the Constitution. The argument of learned counsel for the respondents is that the appellant was only managing the industry and it had no proprietary right therein and, therefore, it could not maintain the application. Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose.* ***It is, therefore, clear that persons other than those claiming fundamental rights can also approach the court seeking a relief thereunder. The article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. In State of Orissa v. Madan Gopal Rungta [(1952) SCR 28] this Court has ruled that the existence of the right is the foundation of the exercise of jurisdiction of the court under Article 226 of the Constitution. In Chiranjit Lal Chowdhuri v. Union of India [(1950) SCR 869] it has been held by this Court that the legal right that can be enforced under Article 32 must ordinarily be the right of***

[1] AIR 1962 SC 1044

> ***the petitioner himself who complains of infraction of such right and approaches the court for relief. We do not see any reason why a different principle should apply in the case of a petitioner under Article 226 of the Constitution. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified.*** *The question, therefore, is whether in the present case the petitioner has a legal right and whether it has been infringed by the contesting respondents. The petitioner entered into an agreement dated July 24, 1948, with Respondent 5 in regard to the management of Oriental Gas Company."*
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> *(Emphasis supplied)*

Again, the Apex Court in the case of ***ADI PHEROZSHAH GANDHI v. H.M.SEERVAI, ADVOCATE GENERAL OF MAHARASHTREA[2],*** *holds that the Advocate General cannot be seen to be a person aggrieved over the decision of the Government. The Apex Court at paragraphs 32 and 35 holds as follows:*

> *"32. If he is not a person summoned to be bound by the order but a person who is heard in a dispute between others merely to be of assistance in reaching the right conclusion he can hardly have a grievance. The Advocate-General must after he has done his duty leave the matter to the complainant and the advocate or the Bar Council to take the matter further if they choose. In no event the Advocate-General is in the nature of a party having independent rights which he can claim are injured by the decision. The decision does not deny him anything nor does it ask him to do anything. It is*

[2] (1970) 2 SCC 484

thus that Lord Denning says that in these disciplinary proceedings the Attorney-General is not a party as in a lis and after the decision, his duty ends. Lord Denning points this out clearly by saying that the Advocate-General in that case could not have been aggrieved by the order of the Deputy Judge if he had acquitted the delinquent advocate in that case. The Attorney-General's interest was found by Lord Denning in relation to the Crown and the Colony and that too for the special reason that appeal court had denied that the Deputy Judge possessed jurisdiction to hear the case. In our country the Advocate-General does not represent the Executive or the Legislature or the Judiciary in disciplinary proceedings before the Disciplinary Committee. His function is advisory and more akin to an amicus curiae. He is not to take sides except in so far his arguments lend weight to the case of the one side or that of the other. Beyond that he is not interested in the dispute either in his personal capacity or in his capacity as an Advocate-General. He does not represent the Government in these proceedings. If the Government was interested the notice would have gone to it. In other statutes, where the Central Government is vitally interested, as for example, in the Chartered Accountants' Act, the notice does not go to the Advocate-General but to Government and the Government appears through the Advocate-General. The Advocate-General under the Act finishes his duty when the hearing is over and he cannot be considered to be a party interested or a "person aggrieved". ***I do not find anything in the Act which indicates that the Advocate-General is to be treated as "person aggrieved" by a decision whether in favour of the advocate or against him. Indeed it would have been the easiest thing to give a right of appeal to the Advocate-General eo nomine without including him in the compendious phrase "person aggrieved". If he is not noticed, the***

order would be held to deny him something which the law entitled him to. That is quite different. The larger proposition contended for by Mr Desai is therefore not acceptable to me.

35. The advocate here explained that he was held guilty before the Magistrate in the circumstances in which he was placed. The fact of his conviction as well as his full statement bearing on his conduct were before the Disciplinary Committee of the State Bar Council. They had to choose between the two, that is to say, the result of a summary trial without going into merits and proof of the misconduct. Having examined the advocate and seen the record, the Disciplinary Committee of the State Bar Council chose to accept the plea of the advocate and held that he was not guilty. They were also satisfied that the summary proceedings in the criminal trial in England offended against the principles of natural justice. They were entitled to this view on which much can be said on both sides. If the Advocate-General's view of the case was not accepted by the Disciplinary Committee he could not have any grievance. He could not make this into his own cause or a cause on behalf of persons he did not represent. He had done his duty and the matter should have rested there. For this reason I am of the view that in this case the Advocate-General was not a "person aggrieved" within the meaning of Section 37 of the Advocates' Act even on the narrow ground and the appeal filed by him before the Disciplinary Committee of the Bar Council of India was incompetent."

(Emphasis supplied)

In a later judgment, a Four Judge of the Apex Court in the case of ***JASBHAI MOTIBHAI DESAI V. ROSHAN KUMAR AND OTHERS***[3]*, while interpreting the word 'person aggrieved' to have locus to file a petition under*

[3] (1976) 1 SCC 671

Article 226 of the Constitution of India, holds as follows:

> *"8. The High Court, however, dismissed the writ petition on the ground that no right vested in the appellant had been infringed, or prejudiced or adversely affected as a direct consequence of the order impugned by him, and as such, he was not an "aggrieved person" having a locus standi in the matter.*
>
> *xxxxx*
>
> *17. The ratio of the decision in Queen v. Justices of Surrey was followed in King v. Groom ex parte [(1901) 2 KB 157 : 70 LJKB 636 : 17 TLR 433] . There, the parties were rivals in the liquor trade. The applicants (brewers) had persistently objected to the jurisdiction of the justices to grant the license to one J.K. White in a particular month. It was held that the applicants had a sufficient interest in the matter to enable them to invoke certiorari jurisdiction.*
>
> *xxxxx*
>
> *27. In Regina v. Padington Valuation Officer, ex parte Peachy Properly Corporation Ltd. [(1966) 1 QB 380] , ratepayers were held to have the locus standi to apply for certiorari, notwithstanding the fact that it could not be said that the actual burdens to be borne by the applicants fell more heavily on them than on other members of the local community.*
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> *28. In Bar Council of Maharashtra v. M.V. Dabholkar [(1975) 2 SCC 702] a Bench of seven learned Judges of this Court considered the question whether the Bar Council of a State was a "person aggrieved" to maintain an appeal under Section 38 of the Advocates' Act, 1961. Answering the question in the affirmative, this Court, speaking through Ray, C.J., indicated how the expression "person aggrieved" is to be*

interpreted in the context of a statute, thus: [p. 711, para 28]

> *"The meaning of the words 'a person aggrieved' may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one 'a person aggrieved'. Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words 'a person aggrieved' is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates' Act is comparable to the role of a guardian in professional ethics. The words 'person aggrieved' in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests."*

29. In Rex v. Butt ex parte Brooke [(1921-22) 38 TLR 537] a person who was merely a resident of the town, was held entitled to apply for certiorari. Similar is the decision in Regina v. Brighton Borough Justices ex parte Jarvis [(1954) 1 WLR 203] .

30. Typical of the cases in which a strict construction was put on the expression "person aggrieved", is Burton v. Minister of Housing and Local Government [(1961) 1 QB 278] . There, an appeal by a

company against the refusal of the local planning authority of permission to develop land owned by the company by digging chalk, was allowed by the minister. Owners of adjacent property applied to the High Court under Section 31(1) of the town and Country Planning Act, 1959 to quash the decision of the minister on the ground that the proposed operations by the company would injure their land, and that they were "persons aggrieved" by the action of the minister. It was held that the expression "person aggrieved" in a statute meant a person who had suffered a legal grievance; anyone given the right under Section 37 of the Act of 1959 to have his representation considered by the minister was a person aggrieved, thus Section 31 applied, if those rights were infringed; but the applicants had no right under the statute, and no legal rights had been infringed and therefore they were not entitled to challenge the minister's decision. Salmon, J. quoted with approval these observations of James, L.J. in In Re Sidebothem [(1880) 14 Ch D 458, 465 : 42 LT 783 : 28 WR 715] :

> *"The words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made.* ***A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something."***

31. Ex parte Stott [(1916) 1 KB 7 : 85 LJKB 502 : 32 TLR 84] is another illustration of a person who had no legal grievance, nor had he

sufficient interest in the matter. A licensing authority under the Cinematograph Act, 1901, granted to a theatre proprietor a licence for the exhibition of cinematograph films at his theatre. The license was subject to the condition that the licensee should not exhibit any film if he had notice that the licensing authority objected to it. A firm who had acquired the sole right of exhibition of a certain film in the district in which the theatre was situated entered into an agreement with the licensee for the exhibition of the film at his theatre. The licensing authority having given notice to the licensee that it objected to the exhibition of the film, the firm applied for a writ of certiorari to bring up the notice to be quashed on the ground that the condition attached to the licence was unreasonable and void, and that they were aggrieved by the notice as being destructive of their property. It was held that whether the condition was unreasonable or not, the applicants were not persons who were aggrieved by the notice and had no locus standi to maintain the application.

32. Similarly, in King v. Middlesex Justices [(1832) 37 RR 594 : (1832) 3 B & Ad 938 : 110 ER 345] it was held that the words "person who shall think himself aggrieved" appearing in the statute governing the grant of licenses to innkeepers mean a person immediately aggrieved as by refusal of a licence to himself, and not one who is consequently aggrieved, and that though the justices had granted a licence to a part to open a public house not before licensed, within a very short distance of a licensed public house, the occupier of the latter house could not appeal against such grant.

33. Other instances of a restricted interpretation of the expression "person aggrieved" are furnished by R. v. Bradford-on-Avon Urban District Council ex parte Boulton [(1964) 2 All ER 492] ; Gregory v. Camden

London Borough Council [(1966) 1 WLR 899] ; R. v. London O.S. ex parte Westminister Corporation [(1951) 2 KB 508] ; Regina v. Cardiff Justices ex parte Cardiff Corporation [(1962) 2 QB 436] .

34. This Court has laid down in a number of decisions that in order to have the locus siandi to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject-matter of the application, though in the case of some of the writs like habeas corpus or quo warranto this rule is relaxed or modified. In other words, as a general rule, infringement of some legal right or prejudice to some legal interest inhering in the petitioner is necessary to give him a locus standi in the matter, *(see State of Orissa v. Madan Gopal Rungta [AIR 1952 SC 12 : 1952 SCR 28] ; Calcutta Gas Co. v. State of W.B. [AIR 1962 SC 1044 : 1962 Supp (3) SCR 1] ; Ram Umeshwari Suthoo v. Member, Board of Revenue, Orissa [(1967) 1 SCA 413] ; Gadde Venkateswara Rao v. Government of A.P. [AIR 1966 SC 828 : (1966) 2 SCR 172] ; State of Orissa v. Rajasaheb Chandanmall [(1973) 3 SCC 739] ; Satyanarayana Sinha Dr v. S. Lal & Co. [(1973) 2 SCC 696 : (1973) SCC (Cri) 1002]).*

35. The expression "ordinarily" indicates that this is not a cast-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the proceedings will be covered by this rule. The principles enunciated in the

English cases noticed above, are not inconsistent with it."

(Emphasis supplied)

Therefore, in the light of the afore-extracted enunciation of law by the Apex Court, the petitioner cannot be construed to be a person aggrieved, that too, to challenge the decision of the Cabinet.

13. The learned counsel appearing for the Lokayukta has placed reliance upon a judgment rendered by a Division Bench of this Court holding that the Lokayukta was entitled to challenge the order passed by the Karnataka State Administrative Tribunal by filing a writ petition in the case of ***LOKAYUKTA v. PRAKASH T.V.*** *in* ***Writ Petition No.29212 of 2017 AND CONNECTED MATTERS*** *disposed of on* ***29.06.2021****. The said decision need not bear consideration at the hands of this Court at this juncture as the same is stayed by the Apex Court in* ***S.L.P.Nos.13209-210/2021*** *in terms of its order* ***dated 07.09.2021****. This is in the light of the law laid down by a Co-ordinate Bench of this Court in the case of* ***G.R.VENKATESHWARA REDDY v. KSRTC[4],*** *wherein, it holds as follows:-*

"18. In regard to the Decision in W.P. 28043/93, it is stated by the learned Counsel for the respondent that the respondent has challenged the said Decision in an Appeal and an Interim Order of stay of operation of the Decision in W.P. 28043/1993 has been granted. Learned Counsel for the petitioner confirmed that not only the Decision was stayed, but further Enquiry in the said case was also stayed. The Decision in W.P. 28043/1993 is contrary to the Decision of the Supreme Court in Crescent Dyes & Chamical's case1 which holds that a delinquent has no right to be represented through Counsel or Agent unless the law or Rules specifically confers such a right. Rule 23(8) does not confer specifically, such a right. Hence

[4] ILR 1994 Kar 2736

the petitioner cannot rely on the Decision in W.P. No. 28043/1993 nor is the said Decision binding precedent.

19. Mr. K. Subba Rao however contended that what was stayed was the 'implementation' of the Decision in W.P. 28043/1993 and not the 'ratio decidendi' or the 'reasoning' in that case and as long as the Decision in W.P. 28043/1993 was not reversed, Judicial propriety requires that this Court should follow the Decision in W.P. 28043/1993. He relied on the Decision of the Supreme Court in Ayyaswami Gounder v. Muniswamy Gounder and Shridhar v. Nagar Palika, Naunpur14 to contend that a Single Judge not agreeing with an earlier Decision of another Single Judge of the same Court, should refer the matter to a larger Bench and propriety and decorum did not warrant the Single Judge to hold contrary to the earlier Decision of the same High Court. There is no doubt that a Single Judge is bound by the Decision of another Single Judge of the same Court. But where the earlier Decision has been stayed, it means that the Decision is not in operation, but kept in abeyance and should not be acted upon. Thus, where the earlier Decision of the Single Judge is stayed in appeal, there is in effect no Decision to be followed. Therefore the contention that I am bound to follow the earlier Decision or refer the matter to a larger Bench is untenable."

(Emphasis supplied)

This Court has considered the effect of a judgment of the Co-ordinate Bench being stayed by the Division Bench. The decision relied on by the learned counsel even otherwise was a case where the challenge was to an order passed by the Karnataka State Administrative Tribunal. Here, the issue at hand is the

locus of the Lokayukta to challenge the decision of the Cabinet, which is not the case in the aforesaid Division Bench. In terms of the judgments rendered by the Apex Court as afore-quoted and the statutory frame work, it cannot but be held that the Lokayukta has no locus to challenge the decision of the Cabinet. If the petitioner has no locus to file a writ petition against the decision of the Cabinet, the other grounds urged need not be considered.

14. Wherefore, the petition by the Lokayuktha is dismissed on account of lack of locus, as they are not, and cannot be the person aggrieved.

In view of disposal of the main petition, I.A.No.1/2021 does not survive for consideration and the same is disposed of."

8. In the light of the afore-quoted order passed by this Court and statutory frame work of the Act, the power of the disciplinary authority to exercise discretion cannot be taken away merely because a recommendation is made by the Lokayukta for imposition of particular penalty.

For all the aforesaid reasons, I do not find any warrant to interfere in the case at hand, in the peculiar circumstances.

Sd/-
JUDGE

JY