R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF NOVEMBER, 2020

BEFORE

THE HON'BLE MR.JUSTICE P.B. BAJANTHRI

WRIT PETITION NO. 48384/2017 (GM-KLA)

C/W

WRIT PETITION NO. 61697/2016 (S-RES)

IN W.P.NO.48384/2017

BETWEEN:

SRI K.S. NANJEGOWDA,
S/O LATE SUBBARAYAPPA,
AGED ABOUT 56 YEARS,
OCC: BILL COLLECTOR, BBMP
R/O. NO.892, 5TH MAIN, 13TH CROSS,
VIDYARANAYAPURA,
BANGALORE – 560 097. … PETITIONER

(BY SRI. M.S. BHAGWAT, ADVOCATE (NOC))

AND:

1. STATE BY KARNATAKA LOKAYUKTHA,
M.S. BUILDING,
DR AMBEDKAR VEEDHI,
BENGALURU - 560 001.
REPRESENTED BY ADDITIONAL
REGISTRAR (ENQUIRIES-1)

2. THE STATE OF KARNATAKA,
URBAN DEVELOPMENT DEPARTMENT,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
VIKASA SOUDHA, BANGALORE – 560 001. … RESPONDENTS

(BY SRI. VENKATESH ARABATI, ADVOCATE FOR R-1 (MA NOT FILED)
SRI. LAXMINARYAN, AGA FOR R2 (MA NOT FILED))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ARTICLE OF CHARGES DTD:21.11.2016 FRAMED BY THE RESPONDENT LOKAYUKTHA A COPY OF WHICH IS PRODUCED AT ANNEXURE-G AND ETC.,

IN W.P.NO.61697/2016

BETWEEN:

SRI. N.G. NATARAJ,
AGED ABOUT 52 YEARS,
S/O N.S. GOVINDA SETTY,
REVENUE INSPECTOR,
OFFICE OF THE TOWN MUNICIPAL COUNCIL,
ATTIBELE (BBMP WARD NO.175),
ANEKAL TALUK, BENGALURU URBAN
DISTRICT, BENGALURU - 562 106 ... PETITIONER

(BY SRI. S.B. MUKKANNAPPA, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF URBAN
DEVELOPMENT (BBMP),
VIKASASOUDHA,
DR.B.R.AMBEDKAR VEEDHI,
BENGALURU - 560 001.

2. THE COMMISSIONER,
BRUHAT BENGALURU MAHANAGARA
PALIKE, N.R. SQUARE,
BENGALURU - 560 002.

3. THE REGISTRAR
KARNATAKA LOKAYUKATA,
M.S. BUILDING,
DR.B.R.AMBEDKAR VEEDHI,
BENGALURU - 560 001. ... RESPONDENTS

(BY SRI. LAXMINARAYAN, AGA FOR R1.
SRI. I.G. GACHCHINAMATH, ADVOCATE FOR R-2.
SRI. ASHWIN .S. HALADY, ADVOCATE FOR R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 14.09.2016 PASSED BY R-1 VIDE ANNEX-J TO W.P.; AND ETC.,

THESE PETITIONS HAVING BEEN HEARD AND RESERVED ON 12.10.2020 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

These two petitions involve common parties. The issues arising therein for decision is also common as would appear from the discussion infra. Therefore, this Court proposes to decide these two petitions by a common order.

2. The petitioner has assailed the Government Order dated 17.10.2016 and framing of Article of Charges by the Upalokayukta dated 21.11.2016 (Annexures E and G respectively) in Writ Petition No.48384/2017 and the petitioner in Writ Petition No.61697/2016 has assailed the Government Order dated 14.09.2016 passed by the first respondent and framing of Article of Charges by the

Upalokayuktha dated 7.11.2016 (Annexures J & K) respectively.

3. **THE FACTS AS DISCERN FROM WRIT PETITION NO.48384/2017 ARE AS UNDER:**

Respondents initiated parallel proceedings against the petitioner arising out of the allegation that on 18.06.2010 at about 11.00 a.m., one Sri B P Ramegowda along with H U Prakash approached the petitioner in the BBMP office near Srigandha Kavalu Bus Stand, Bengaluru and enquired about arrears of house tax. The petitioner told Ramegowda that tax for the past 3 years was not paid and informed that the tax worked out to Rs.50,000/-. Ramegowda asked the petitioner to verify the arrears of tax and calculate properly. Instead of properly calculating tax, petitioner is alleged to have demanded illegal gratification of Rs.6,000/-. On 19.06.2010, Ramegowda paid sum of Rs.2,000/-. Petitioner was not satisfied with the sum of Rs.2,000/- and once again insisted for payment of Rs.6,000/-. Complainant being dissatisfied

with the demand made by the petitioner, registered a complaint on 19.06.2020. On the basis of the complaint, Crime No.23/2010 was registered under Sections 7, 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988 (Hereinafter referred to as the 'P.C. Act, 1988' for short), consequently, FIR was registered. Thus, trap proceedings was laid against the petitioner in respect of demand and acceptance of illegal gratification of sum of Rs.6,000/-.

4. Based on the aforesaid allegations, petitioner was dismissed from service by the appointing authority/BBMP on 08.09.2010. Feeling aggrieved by the dismissal order, petitioner preferred Writ Petition No.30375/2010 and this Court granted interim order on 31.05.2011. Petitioner submitted copy of the interim order dated 31.05.2011 in the Office of the Karnataka Lokayukta. Office of the Upalokayukta deferred the preparation and submission of report under Section 12(3) of The Karnataka Lokayukta Act, 1984 (Hereinafter referred to as the 'Act, 1984' for short)

without examining whether interim order dated 31.05.2011 would be a hurdle for preparation and submission of report under Section 12(3) of Act, 1984.

5. In the criminal proceedings in Special C.C.No.342/2010, petitioner was acquitted on 30.07.2015 on the file of the XXIII Additional City Civil and Sessions Judge and Special Judge, Bengaluru (CCH-24). Respondents have taken a decision not to prefer appeal against acquittal of the petitioner.

6. Office of the Upalokayukta prepared report under Section 12(3) of Act, 1984 on 10.08.2016 and it was forwarded to the State Government on 16.08.2016. Based on the report of the office of the Upalokayukta dated 10.08.2016, State Government entrusted disciplinary proceedings to the Office of the Upalokayukta on 17.10.2016. Consequently, office of the Upalokayukta initiated disciplinary proceedings by framing Article of Charges on 02.11.2016. The present writ petition is filed on 25.10.2017. When things stood thus,

petitioner is stated to have attained the age of superannuation on 31.08.2020. W.P.30375/2010 was allowed on 01.10.2020 pertaining to petitioner's dismissal from service.

7. **THE CASE RUN IN WRIT PETITION NO.61697/2016 IS SUBSTANTIALLY SIMILAR TO THAT RUN IN W.P.No.48384/2017.**

In Writ Petition No.61697/2016 the petitioner N.G. Nataraj was appointed as a Bill Collector on daily wage basis at Bommanahalli Grama Panchayath, Bengaluru South Taluk on 01.12.1990. The petitioner was extended the benefit of equal pay for equal work in the cadre of Bill Collector on 18.08.1999. Bommanahalli Grama panchayath was merged with the respondent BBMP among other grama panchayaths and Town Municipal Councils on 16.01.2007. Consequently, among others, petitioner's services were regularized.

8. On 30.07.2010 one Sri V.K. Manjunath filed a complaint to the Lokayuktha Police against the petitioner alleging that the petitioner had demanded and accepted bribe of Rs.1,500/- for transfer of katha. Lokayuktha Police registered case in Crime No.34/2010 under the provisions of the P.C. Act, 1988. Based on the aforesaid complaint and registration of Crime, Lokayuktha Police conducted Trap proceedings. The office of the Lokayuktha recommended to the competent authority to place the petitioner under suspension. In this background, second respondent BBMP issued a show cause notice to the petitioner for which petitioner submitted his reply denying the alleged charge on 20.09.2010. The second respondent proceeded to dismiss the petitioner from service on 29.10.2010, which was the subject matter of Writ Petition No.35383/2010 wherein, this Court had granted an interim order staying the dismissal order on 31.05.2011. Consequently, W.P.No.35383/2010 was allowed in favour of the petitioner on 01.10.2020.

9. For the alleged allegations relating to illegal demand and acceptance of gratification, Lokayuktha police initiated Criminal case, it was numbered as Special CC No.40/2011. The petitioner was acquitted in the said case on 30.06.2015. The petitioner was promoted to the post of First Division Assistant on 28.04.2016. The Office of the Upalokayuktha submitted investigation report u/s.12(3) of Act, 1984 directing the first respondent - Government for taking action u/s.12(4) of Act, 1984 read with Rule 14-A of The Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 (Hereinafter referred to as the 'Rules, 1957' for short). The first respondent by its order dated 14.09.2016 entrusted the disciplinary proceedings to the third respondent. On receipt of the Government Order dated 14.09.2016, the third respondent issued Article of Charges on 07.11.2016. Hence, this petition questioning the validity of the Government Order dated 14.09.2016 and issuance of Article of Charges dated 7.11.2016.

10. Mr. M.S. Bhagwath, learned counsel for the petitioner in Writ Petition No.48384/2017 challenging the entrustment of the disciplinary proceedings by the Government and initiation of enquiry by the office of the Upalokayukta contended that there is inordinate delay in initiation of enquiry on the alleged allegations dates back to 19.06.2010, the date on which the alleged trap proceedings was conducted. It was further contended that petitioner was acquitted in the criminal case on 30.07.2015 whereas the respondents i.e., Office of the Upalokayukta and the Government have not taken any action during the period from 19.06.2010 till furnishing of report under Section 12(3) of Act, 1984 on 10.08.2016. Acquittal of the petitioner is an honourable acquittal. Therefore, initiation of enquiry on departmental side is impermissible. It was further contended that State Government is required to examine the report of the office of the Upalokayukta furnished under Section 12(3) read with Section 12(4) of Act, 1984 and Rule 14-A(2)(iii) of Rules, 1957. There is no examination as is evident from the

Government Order dated 17.10.2016. In support of the aforesaid contentions, learned counsel for the petitioner relied on the following decisions:

(i) **SRI P V MAHADEVAN vs M.D.T.N.HOUSING BOARD** reported in (2005)6 SCC 636 (Para.11)

(ii) **SRI M V BIJLANI vs UNION OF INDIA AND OTHERS** reported in (2006)5 SCC 88 (Paras.16,17 and 19)

(iii) **SRI H R JAYADEVAPPA vs THE STATE OF KARNATAKA AND OTHERS** passed in Writ Petition No.44092/2013 disposed of on 19.02.2014 (Paras. 7 to 9)

(iv) **UNION OF INDIA AND OTHERS vs GYAN CHAND CHATTAR** reported in (2009)12 SCC 78 (paras.21 and 31)

The aforesaid decisions related to delay in initiation of enquiry.

(i) **SRI AEJAZ HUSSAIN vs THE STATE OF KARNATAKA AND OTHERS** in Writ Petition No.203239/2019 disposed of on 29.05.2020 (Paras.21 to 26) and

(ii) Acquittal order at Annexure 'A' dated 31.07.2015 at para.20.

The aforesaid decisions related to acquittal in criminal case suffice to quashing of disciplinary proceedings.

(iii) **THE KARNATAKA LOKAYUKTHA AND ANOTHER vs SRI H N NIRANJAN AND ANOTHER** in Writ Petition No.43079/2015 dated 06.03.2017 (paras.4 and 5)

The aforesaid decision related to non-compliance of Section 12(4) of Act, 1984 and Rule 14-A(2)(iii) of Rules, 1957.

11. It is contended that there is no examination by the State Government with reference to report under Section 12(3) read with Section 12(4) of the Act, 1984 and Rule 14-A(2)(iii) of Rules, 1957. No other contentions are pressed.

12. Mr. S.B. Mukkannappa, learned counsel for the petitioner in Writ Petition No.61697/2016 re-iterated the contentions urged by Mr. M.S. Bhagwath.

13. Learned counsel for the State resisted the contentions of the petitioners and submitted that there is no delay in entrustment of the disciplinary proceedings to the Office of the Upalokayukta, since office of the Upalokayukta

communicated report prepared under Section 12(3) of Act, 1984 dated 10.08.2016 to the State Government on 16.08.2016 and thereafter, the State Government entrusted the disciplinary proceedings to Office of Upalokayukta on 17.10.2016 in Writ Petition No.48384/2017. Similarly in Writ Petition No.61697/2016, report u/s.12(3) of Act, 1984 was communicated on 25.07.2016 and entrusted to Upalokayuktha on 14.09.2016. Thus, there is no delay on the part of the State Government. It was further contended that having regard to the nature of allegations relating to demand and acceptance of illegal gratification which is grave in nature, delay would not be a hurdle in view of the Hon'ble Apex Court decisions. The cited decision do not assist the petitioners case. It was also contended that State Government is required to examine report under Section 12(3) read with Section 12(4) of Act, 1984 and Rule 14-A(2)(iii) of Rules, 1957 to the extent that only whether prima facie case is made out to entrust the disciplinary proceedings to the Office of the Lokayuktha/Upalokayukta or not. Acquittal in a criminal

case would not bar disciplinary authority to initiate disciplinary proceedings, since both the proceedings are for offence and misconduct. Thus, petitioners have not made out case so as to interfere with the impugned order dated 17.10.2016 and 21.11.2016 (Article of Charges) vide Annexures E and G in WP No.48384/2017 and orders dated 14.9.2016 and 7.11.2016 (Article of Charges) vide Annexures J & K in WP No.61697/2016.

14. Learned counsel for the Upalokayuktha has not disputed the facts of the case that petitioners were involved in parallel proceedings. To rebut the contention of the petitioners on the ground of delay, he submitted that gravity of allegations is required to be taken into consideration. The alleged charge is relating to demand and acceptance of illegal gratification which is grave in nature. In such circumstances, even if there is delay, the same would not be a hurdle for initiating disciplinary proceedings. In support of the aforesaid contentions, he relied on the following decisions:

(i) **SRI NARASIMHAMURTHY & OTHERS vs STATE OF KARNATAKA & OTHERS** dated 18.01.2016 in Writ Petition Nos.21836-21839/2015.

(ii) **SECRETARY, MINISTRY OF DEFENCE AND OTHERS vs PRABHASH CHANDRA MIRDHA** reported in (2012)11 SCC 565.

(iii) **ANANT R KULKARNI vs Y P EDUCATION SOCIETY & OTHERS** reported in (2013)6 SCC 515

15. Learned counsel for the Upalokayuktha vehemently contended that petitioners acquittal in the respective criminal case is not an honourable acquittal for the reason that PW1 – complainant, PW4 – trap witness and PW5 remained hostile. It was further contended that trial Court proceeded to hold that PW2 – shadow witness's version is unbelievable as he was cited as a witness in three identical cases insofar as Sri Nanjegowda is concerned. As regards, G.Nataraj, learned counsel for the Lokayukta reiterated that some of the witnesses remained hostile. On this issue, learned counsel cited the following decisions:

(i) **KARNATAKA POWER TRANSMISSION CORPORATION LIMITED vs C NAGARAJU & ANOTHE**R (2019)10 SCC 367 (Para.10)

(ii) **CHANDRASHEKAR GOLASANGI vs THE STATE OF KARNATAKA** in Writ Petition No.34975/2018 disposed of on 05.05.2020 (Paras 12 and 16)

(iii) **DEPUTY INSPECTOR GENERAL OF POLICE & ANOTHER vs S SAMUTHIRAM** (2013)1 SCC 598 (Paras.23 and 26)

(iv) **AJIT KUMAR NAG vs GENERAL MANAGER (PJ), INDIAN OIL CORPORATION LIMITED, HALDIA & OTHERS** (2005)7 SCC 764 (Full Bench) (Para.11)

16. It was also contended that **Sri Aejaz Hussain's** case (supra) cited on behalf of the petitioners has no assistance to the petitioners since on factual aspect it varies. In these petitions, initiation of enquiry is under challenge whereas in **Sri.Aejaz Hussain's** case supra disciplinary proceedings were concluded, whereas in the cases on hand, it

is still in the stage of inquiry which is yet to commence by the Inquiry Officer.

17. Learned counsel for the Upalokayuktha submitted that the State Government need not assign elaborate reasons while accepting report under Section 12(3) of the Act, 1984 in entrustment of the disciplinary proceedings to the Office of the Upalokayuktha with reference to the report under Section 12(4) of the Act 1984 read with Rule 14-A(2)(iii) of Rules, 1957. He has cited the following decisions:

(i) **JAYAPRAKASH K vs STATE OF KARNATAKA BY ITS SECRETARY, PANCHAYATH & RURAL DEVELOPMENT & OTHERS** 2016(4) KCCR 3700 (para.4)

(ii) **SRI GOPALAKRISHNA vs THE STATE OF KARNATAKA & OTHERS** in Writ Petition No.58174/2017 dated 26.03.2018

(iii) **SRI GOPAL HANUMATH KASE vs STATE OF KARNATAKA** in Writ Petition No.5674/2018 disposed of on 13.04.2018

(iv) **VIJAY KUMAR G SULAKHE vs STATE OF KARNATAKA & OTHERS** in Writ Petition No.104460/2018 and connected matters ,disposed of on 10.09.2018.

(v) **STATE OF KARNATAKA and Ors. vs SRI SHIVANANDA B MAGADUM AND ORS.** in Writ Petition No.55904/2015 disposed of on 11.7.2016.

18. Heard learned counsel for the parties.

19. The core issues involved in the present petitions are as follows:

(i) Whether delay in initiation of enquiry vitiates initiation of enquiry proceedings or not?

(ii) Whether acquittal/honourable acquittal in criminal proceedings vitiates disciplinary proceedings?

(iii) Whether entrustment of disciplinary proceedings by the State Government under Rule 14-A(2)(iii) of Rules, 1957 is in accordance with

Section 12(4) of the Act, 1984 read with Rule 14-A(2)(iii) of Rules, 1957 or not?

20. Both the petitioners were allegedly involved in demand and acceptance of illegal gratification which is punishable under Sections 7, 13(1)(d) and 13(2) of P.C. Act, 1988. Petitioner - Nanjegowda was acquitted in C.C.No.342/2010 on 30.07.2015 on the file of the XXIII Additional City Civil and Sessions Judge and Special Judge, Bengaluru (CCH-24). Similarly, petitioner – N G Nataraj was acquitted in Spl.C.C.No.40/11 on 30.06.2015 on the file of the XXIII Additional City Civil and Sessions Judge and Special Judge, Bengaluru (CCH-24) pursuant to the trap proceedings dated 19.06.2010 and 30.07.2010 respectively. In this backdrop, Upalokayukta investigated the matter and submitted a report under Section 12(3) of the Act, 1984. On receipt of the investigation report, Government entrusted the disciplinary proceedings to the Upalokayukta on 17.10.2016 and 14.09.2016. Consequently, Upalokayukta framed Article

of Charges on 21.11.2016 and 07.11.2016 respectively. Petitioners have questioned the validity of both entrustment of enquiry and issuance of Article of Charges.

DELAY IN INITIATION OF INQUIRY

21. Learned counsel for the petitioners submitted that trap proceedings were laid on 19.06.2010 and 30.07.2010, criminal proceedings were concluded in honourable acquittal on 30.07.2015 and 30.06.2015. Faced with these dates and events, the investigation by the Upalokayukta, submission of investigation report and entrustment of enquiry and framing of Article of Charges are in the year 2016. Thus, there is inordinate delay in initiation of enquiry and that too, after acquittal in the criminal proceedings. Therefore, on the ground of delay in investigation and commencement of disciplinary proceedings, impugned orders are not sustainable. In support of 'delay in initiation of disciplinary proceedings' he relied on the following decisions viz:,

P V Mahadevan (supra), **M V Bijlani** (supra), **K H Jayadevappa** (supra) and **Gyan Chand Chattar** (supra).

22. No-doubt there is delay in initiation of disciplinary proceedings as is evident from the date of trap proceedings and initiation of enquiry i.e. there is delay of about 6 years. At the same time, gravity of the charges is in respect of demand and acceptance of illegal gratification which is serious in nature and provisions of P.C.Act, 1988 are attracted. The aforesaid cited decisions on behalf of petitioners to nullify the disciplinary proceedings on the ground of delay are not relating to the alleged charges of demand and illegal gratification.

23. Learned counsel for the Lokayukta cited decisions of **SRI NARASIMHAMURTHY** (supra), **SRI PRABHASH CHANDRA MIRDHA** (supra) and **SRI ANANT R KULKARNI** (supra). Perusal of the aforesaid decisions so also in the case of **SHASHI BHUSHAN PRASAD vs INSPECTOR GENERAL CENTRAL INDUSTRIAL SECURITY FORCE & OTHERS.**

reported in AIR 2019 SC 3586 (Para.19 and Paras.11 to 23), Apex Court has distinguished that even if there is delay in commencement of the disciplinary proceedings, gravity of the charge is required to be taken into consideration. Thus, petitioners have not made out case so as to interfere with initiation of enquiry on the ground of delay in initiation of enquiry.

24. The petitioners cited **P B Mahadevan's** case (supra). Apex Court allowed **P B Mahadevan's** case on the score that there was no explanation for delay; In **M V Bijlani's** case (supra) delay is taken into consideration which prejudice the delinquent officials. In H **R Jayadevappa's** case (supra), delay must be explained for initiating departmental inquiry whereas in the case of **Narasimhamurthy** (supra) cited on behalf of the Lokayukta counsel, it is held that no prejudice or injustice would be caused even if there is delay. In the **Secretary's** case (supra)

it is held that unless delay is prejudiced, there is no bar in concluding inquiry within a reasonable period.

In **Anant R Kulkarni's** case (supra), Court or Tribunal should not set-aside the departmental inquiry and quash the charges on the ground of delay. The overall analysis is under what circumstances inquiry proceedings could be interfered and set-aside on the ground of delay depends on the facts and circumstances of each case. Undisputedly in the present case, office of the Upalokayukta, were waiting for criminal proceedings to be concluded. That apart gravity of the allegations cannot be ignored even if there is delay. The allegations are relating to demand and acceptance of illegal gratification. Therefore, one has to draw inference that even though there is delay in initiation of inquiry from the date of alleged incident, prima facie delay would not be hurdle since petitioners were facing criminal proceedings and it was concluded in the year 2016. Consequently, Upalokayukta proceeded to take action on the departmental side. Thus, the

cited decisions on behalf of the petitioners do not assist so as to interfere with the impugned order and Article of Charges on the ground of delay.

PARALLEL PROCEEDINGS

25. Learned counsel for the petitioners submitted that petitioners were acquitted in the criminal cases for the offence under Sections 7, 13(1)(d) of P.C. Act, 1988 Their acquittal in the criminal case amounts to honourable acquittal in view of the findings rendered by the respective Sessions Court. Learned counsel for the petitioners cited **Sri Aejaz Hussain's** case (supra) wherein this Court nullified imposition of penalty under disciplinary proceedings pursuant to the acquittal. Lokayukta counsel submitted that petitioners case is not on account of honourable acquittal in view of the fact that some of the witnesses like complainant, trap witnesses remained hostile. Shadow witnesses's version was taken note of on the score that he was cited as one of the witness in identical matters. Therefore, petitioners acquittal

is not an honourable acquittal. On this point, Lokayukta counsel relied on the decisions of **KARNATAKA POWER TRANSMISSION CORPORATION LIMITED** (supra), **CHANDRASHEKAR GOLASANGI** (supra), **DEPUTY INSPECTOR GENERAL OF POLICE & ANOTHER** (supra) and **AJIT KUMAR NAG** (supra).

26. Learned counsel for the petitioner relied on **Sri Aejaz Hussain** (supra) on the point that if an employee is acquitted in criminal case, consequently, disciplinary proceedings are liable to be set-aside. The respondent relied on **KARNATAKA POWER TRANSMISSION CORPORATION LIMITED** (supra), **CHANDRASHEKAR GOLASANGI** (supra), **DEPUTY INSPECTOR GENERAL OF POLICE & ANOTHER** (supra) and **AJIT KUMAR NAG** (supra) contending that there is no bar for holding disciplinary proceedings as criminal and disciplinary proceedings are different. The acquittal of an employee would not be a hurdle for initiating inquiry.

In the case of ***CORPORATION OF THE CITY OF NAGPUR, CIVIL LINES NAGPUR AND OTHERS VS. RAMACHANDRA AND OTHERS*** reported in ***(1981) 2 SCC 714*** in paragraph 6 it is held as under:-

> *"6. The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction in any way fettered. However, as quite some time has elapsed since the departmental inquiry had started the authority concerned will take into consideration this factor in coming to the conclusion if it is really worthwhile to continue the departmental inquiry in the event of the acquittal of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the inquiry, it can certainly do so. In case the respondents are acquitted, we direct that the order of suspension shall he revoked and the respondents will be reinstated and allowed full salary thereafter even though the authority chooses to proceed with the inquiry. Mr Sanghi states that if it is decided to continue the inquiry, as only arguments*

have to be heard and orders to be passed, he will see that the inquiry is concluded within two months from the date of the decision of the criminal court. If the respondents are convicted, then the legal consequences under the rules will automatically follow."

In the case of ***KARNATAKA SRTC Vs. M.G.VITTAL RAO, (2012) 1 SCC 442*** in paragraph 14 it is held as under:-

"14. In State of A.P. v. K. Allabakash [(2000) 10 SCC 177 : 2000 SCC (L&S) 385], while dismissing the appeal against acquittal by the High Court, this Court observed as under: (SCC p. 177, para 2)

"2. …that acquittal of the respondent shall not be construed as a clear exoneration of the respondent, for the allegations call for departmental proceedings, if not already initiated, against him."

Sri Aejaz Hussain(supra)'s case cited on behalf of the petitioners has no assistance for the reasons that factual aspects of the matters are entirely different that it was a case of concluded disciplinary proceedings whereby the Court weighed the material evidence both in criminal proceedings and domestic inquiry. In the cases on hand, it is in the enquiry stage. Petitioners can utilize the evidence adduced in the criminal cases in the departmental inquiry. The Apex

Court time and again held that criminal and disciplinary proceedings are entirely different actions. Criminal proceedings is for the offence committed and departmental inquiry is for alleged misconduct.

27. In **SHASHI BHUSHAN PRASAD's** case (supra) at **Paras.19, 11 to 23,** Apex Court held that both proceedings are different from each other. Consequently, petitioners contention that their acquittal in the criminal case would bar to initiate disciplinary proceedings do not hold good in view of the aforesaid decision. In the case of ***MANAGEMENT OF BHARAT HEAVY ELECTRICALS LIMITED VS. M.MANI, (2018) 1 SCC 285*** (Paragraphs 20-22) Extract of the aforesaid paragraphs are as under:-

> *"20. Similarly, in our considered view, the Labour Court failed to see that the criminal proceedings and departmental proceedings are two separate proceedings in law. One is initiated by the State against the delinquent employees in criminal court and other i.e. departmental enquiry which is initiated by the employer under the Labour/Service Laws/Rules, against the delinquent employees.*

21. The Labour Court should have seen that the dismissal order of the respondents was not based on the criminal court's judgment and it could not be so for the reason that it was a case of acquittal. It was, however, based on domestic enquiry, which the employer had every right to conduct independently of the criminal case.

22. This Court has consistently held that in a case where the enquiry has been held independently of the criminal proceedings, acquittal in criminal court is of no avail. It is held that even if a person stood acquitted by the criminal court, domestic enquiry can still be held—the reason being that the standard of proof required in a domestic enquiry and that in criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry, it is the preponderance of probabilities. (See Karnataka SRTC v. M.G. Vittal Rao [Karnataka SRTC v. *M.G. Vittal Rao*, (2012) 1 SCC 442 : (2012) 1 SCC (L&S) 171] .)

28. In **KARNATAKA POWER TRANSMISSION CORPORATION LIMITED's** case (supra) (paras.9 to 12), this Court has distinguished **M. PAUL ANTONY** and **G M Tank's** cases on merit, while highlighting the prosecution witnesses turned hostile in the criminal trial against the respondent - C Nagaraj. Moreover, in C.Nagaraj's case disciplinary proceedings were concluded.

29. The Apex Court in the case of **SHASHI BHUSHAN PRASAD'S** case (supra) has distinguished that criminal proceedings and disciplinary proceedings as entirely different. Criminal proceedings is launched for the commission of offence whereas disciplinary proceedings is launched on the misconduct of an employee. Therefore, merely petitioners were acquitted in the criminal case, does not bar the authority to initiate disciplinary proceedings. No-doubt, authority/Court have to examine list of documents and cited witnesses and versions of witnesses. In the present cases, as is evident from the acquittal order, some of the witnesses remained hostile. Therefore, trial Court proceeded to acquit the petitioners for want of material evidence so also corroborative evidences**.** Since, petitioners were not acquitted honourably on merit, consequently, initiation of disciplinary proceedings would not be a hurdle as contended by the learned counsel for the Lokayuktha. Thus, petitioners have not made out case so as to interfere with the respective impugned order on the ground that they were acquitted in

the criminal cases. Hence, disciplinary proceedings are not liable to be set-aside on the sole ground that petitioners were acquitted in the criminal proceedings.

Non-compliance of Section 12(4) of the Act, 1984 and Rule 14-A(2)(iii) of Rules, 1957

30. Learned counsel for the petitioners relied on **H N Niranjan's** case (supra) wherein this Court examined the non-compliance of aforesaid provision from the Government Orders. On the other hand, Lokayukta counsel relied on the decisions in **SRI JAYAPRAKASH** (supra), **SRI GOPALAKRISHNA** (supra), **SRI GOPAL HANUMATH KASE** (supra) and **SRI VIJAY KUMAR G SULAKHE** (supra) and **SRI SHIVANAND MAGADUM** (supra). Prima facie, perusal of Government impugned Orders dated 17.10.2016 and 14.09.2016, it is evident that there is non-compliance of Section 12(4) of the Act, 1984 read with Rule 14-A(2)(iii) of Rules, 1957.

31. No-doubt in the citations cited on behalf of the Lokayukta counsel there is distinction to the extent that order need not disclose the examination of the investigation report by the Government under Section 12(4) of the Act,1984 read with Rules 14-A(2)(iii) of Rules, 1987. This Court in the cases of **H N NIRANJAN (Supra)** and **Dr. *K LALITHA Vs. THE STATE OF KARNATAKA AND OTHERS*** reported in ***2019 (4) KLJ 344*** (paras.9 to 12) wherein it is held that there is non-compliance to the aforesaid provisions. Paragraphs 9 to 12 of **Dr.K.Lalitha's case** (supra) reads as under:

> *"9. A reading of sub-section (3) would make it clear that if Lokayukta or Upa-lokayukta is satisfied that allegation is substantiated either wholly or partly, he shall by report communicate his findings and recommendations along with the relevant documents and materials and other evidence to the Competent Authority. On receipt of such report, the Competent Authority under sub-section (4) of Section 12 shall examine the report forwarded to it under sub-section (3). Firstly, the Lokayukta or Upa-lokayukta shall be satisfied that there are material documents and other evidence to substantiate the allegation and thereafter, give his findings and make recommendations to the Competent Authority. Secondly, on receipt of such report, the Competent*

Authority shall examine the report forwarded to it under sub-section (3) which means, the Competent Authority shall have to examine the relevant documents, materials and other evidence in relation to the allegations made.

10. In the case on hand, on going through the report under Section 12(3) of the Act, dated 8-2-2013 (Annexure-P), it is seen that no material appears to have been considered by the Upa-lokayukta while preparing the report. The report would not indicate the consideration of reply submitted by the delinquent officials including the petitioner. What are the materials on which Section 12(3) report is submitted is not forthcoming from the report.

11. Further, the perusal of the order passed by the State Government under Section 12(4) of the Act dated 12-6-2013 (Annexure-Q), it is clear that it is also as bald as Annexure-P report. Sub-section (4) of Section 12 makes it mandatory for the Competent Authority to examine the report forwarded to it by the Upa-lokayukta. The order would not indicate the consideration of material such as relevant documents, materials and other evidence forwarded to it under sub-section (3) of Section 12 of the Act. The order would only state that the Government has received the report from the Upa-Lokayukta recommending to initiate a departmental enquiry and hence, the Government is referring the matter under Rule 14-A of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 to Upa-Lokayukta for enquiry. The order passed under Section 12(4) of the Act also would not indicate the consideration of materials.

> *12. Hence, we are of the view that the report dated 08.02.2013 submitted under Section 12(3) of the Act (Annexure-P) and the order passed by the 1st respondent dated 12.06.2013 under Section 12(4) of the Act (Annexure-Q), are liable to be quashed and they are accordingly quashed. Respondents 3 and 4 shall consider the reply of the petitioner. On consideration of the materials on record and on being satisfied with allegation, respondents 3 and 4 shall submit the report under Section 12(3) of the Act. Thereafter, the 1st respondent-Government shall examine the report submitted under Section 12(3) of the Act and pass an appropriate order. All further proceedings in furtherance of Government order dated 12-6-2013 are also set aside with liberty to initiate action after the 1st respondent passing an appropriate order under section 12(4) of the Act.*

The Judgment cited on behalf of the Lokayukta counsel is held to be judgment in *per incuriam* for the reason that this Court had no occasion to examine the entire provision of Section 12(4) of Act, 1984 and Rule 14-A(2)(iii) of Rules 1957 for the reason that Section 12(4) of Act, 1984 mandates the competent authority to examine the investigation report submitted on behalf of the Lokayukta/Upalokayukta. On this point **Dr.K.Lalitha's** (supra) judgment assist the petitioners case. Similarly, Rule 14-A(2)(iii) of Rules, 1957 provides two options to the Government that after due examination of the

investigation report of the Upalokayukta under Section 12(3) of Act 1984, Government has to make up its mind as to whether matter is required to be entrusted to the Lokayukta/Upalokayukta with reference to Rule 11 of Rules, 1957 or entrusting to disciplinary authority with reference to Rule 12 of Rules, 1957. In such circumstances, it is mandatory for the Government to record reasons as to why the matter is being entrusted to the Lokayukta/Upalokayukta or to disciplinary authority. Government while entrusting the enquiry to Lokayukta/Upalokayukta has not revealed its mind regarding the investigation report of Section 12(3) of Act, 1984 in the impugned orders. This issue has not been discussed or interpreted in any of the aforesaid decisions cited on behalf of the petitioners and Lokayukta counsel. Therefore, one has to draw inference that the aforesaid cited decisions are judgments *per incuriam* in not taking note of the actual words forthcoming under Rule 14-A(2)(iii) of Rules, 1957. It is obligatory on the part of the Government when it is in receipt of investigation report under Section 12(3) of the

Act 1984, to reveal the reasons as to why matter is entrusted to Lokayukta/Upalokayuta or disciplinary authority, when option is provided under statute. Therefore, the citations cited on behalf of the Lokayukta counsel are hereby distinguished as Judgment in *per incuriam*.

32. Courts have time and again held that even administrative orders are required to be issued with reasons. Apex Court discussed elaborately about necessity of assigning reasons in the case of **THE SECRETARY AND QURETA, VICTORIA MEMORIAL HALL vs HOWRAH, GANATANTRIKA NAGRIK SAMITY AND OTRS.** reported in (2010) 3 SCC 732. In the present cases, entrustment of inquiry to the Upalokayukta could be judicial review. Reasons are not forthcoming as to why the matter was entrusted to Upalokayukta when there was option for the Government to entrust either to the Lokayukta/Upalokayukta or disciplinary authority. Apex Court in the case of ***KUNWAR PAL SINGH (DEAD) BY LRS***

VS. STATE OF U.P. AND OTHERS, (2007) 5 SCC 85.

Paragraph 16 reads as under:-

> *"16. Section 6(2), on a plain reading, deals with the various modes of publication and they are: (a) publication in the Official Gazette, (b) publication in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and (c) causing public notice of the substance of such declaration to be given at convenient places in the said locality. There is no option left with anyone to give up or waive any mode and all such modes have to be strictly resorted to. The principle is well settled that where any statutory provision provides a particular manner for doing a particular act, then, that thing or act must be done in accordance with the manner prescribed therefore in the Act."*

The aforesaid decision is crystal clear that when a statute prescribes a particular manner for doing a particular act, that act must be done in the manner alone whereas in the present cases, Government has failed to assign reasons so also there is non-examination of investigation report under Section 12(4) of the Act 1984, as mandated.

33. Learned counsel for the petitioners submitted that after their acquittal on 30.07.2015 and 30.06.2015, Upalokayukta investigated the matter and submitted the report under Section 12(3) of the Act, 1984. On receipt of the investigation report, the Government is required to examine the investigation report and records and then take a decision while entrusting disciplinary proceedings to the Upalokayukta. Perusal of the Government orders dated 17.10.2016 and 14.09.2016, it is evident that Government has not examined the investigation report and come to the conclusion that it is a case for disciplinary proceedings by the Upalokayukta. It is submitted that Government has not complied with Rule 14-A(2)(iii) of Rules, 1957 read with Section 12(4) of Act, 1984. The aforesaid provisions mandates Government to examine the investigation report and records, such examination are not forth coming in the orders dated 17.10.2016 and 07.11.2016. On the other hand, learned counsel for the Lokayukta resisted the petitioners contention relating to examination of investigation report and order must

reveal that examination of report is directory in nature and not mandatory. Learned counsel for the Lokayukta cited decisions viz., **SRI JAYAPRAKASH** (supra), **SRI GOPALAKRISHNA** (supra), **SRI GOPAL HANUMATH KASE** (supra) and **SRI VIJAY KUMAR G SULAKHE** (supra) and **SRI SHIVANAND MAGADUM** (supra).

34. At this juncture, it is necessary to examine the following issues:

(i) Whether Section 12(4) Act, 1984 and Rule 14-A(2)(iii) of the Rules 1957, are mandatory in nature or not?

(ii) Whether the Government has complied the aforesaid provisions are not?

In this regard, it is necessary to reproduce Section 12(4) of Act, 1984 and Rule 14-A(2)(iii) of the Rules, 1957 reads as under:

> Section 12(4): The competent Authority shall examine the report forwarded to it under sub-section (3) and within three months of the

> date of receipt of the report, intimate or cause to be intimated to the Lokayukta or the Upa-lokayukta the action taken or proposed to be taken on the basis of the report.~
>
> Rule 14-A2(iii): a member of the State Civil Services Group 'C' or Group 'D', (the Lokayukta or the Upalokayukta or, (before the 21-12-1992), the Inspector-General of Police of the Karnataka Lokayukta Police is of the opinion), that disciplinary proceedings shall be taken, he shall forward the record of the investigation along with his recommendation to the Government and the Government, after examining such record, may either direct an inquiry into the case by the Lokayukta or the Upalokayukta or direct the appropriate Disciplinary Authority to take action in accordance with Rule 12.
>
> (Emphasis supplied)

The cited decisions viz., **H.N.NIRANJAN, JAYAPRAKASH, GOPALAKRISHNA, GOPAL HANUMANTH KASE, VIJAY KUMAR G SULAKHE AND SHIVANAND MAGADUM** (supra) by both counsel relates to Rule 14-A(2)(iii) of Rules 1957, and Section 12(4) of the Act 1984, whereas to some extent the Division Bench of this Court in **Dr. K. LALITHA (supra)** assist to the extent that non-compliance of Section 12(4) of the Act and Rule 14-A(2)(iii) of Rules, 1957.

In **Jayaprakash's** case, Rule 14 A(2)(a) was considered and Rule 14 A(2)(iii) Rules, 1957 was not considered. In **Gopala Krishna's case Jayaprakash's** case followed. In **Gopala Hanumanth's** case, Section 12(4) of the Act, 1984 read with Rules 1985 was considered and Rule 14-A(2)(iii) of Rules, 1957 was not considered. In **Vijay Kumar Sulakhe's** case, what has been considered is Section 12(4) of the Act 1984 read with Rule 14-A of Rules, 1957 and not Rule 14-A(2)(iii) of Rules, 1957. In the cases of **Shivanand Magadum** and **Dr.K.Lalitha**, portion of Rule 14-A(2)(iii) of Rules, 1957 has been considered which would assist the petitioners case to some extent.

35. The aforesaid citations in respect of interpretation of Section 12(4) of the Act, 1984 and Rule 14-A(2)(iii) of Rules, 1957 have not been taken in toto. Section 12(4) of the Act, 1984 mandates the competent authority, since the word used is "shall". Similarly, in Rule 14-A(2)(iii) of Rules, 1957, Government has two options i.e., on receipt of investigation

report under Section 12(3) of the Act, 1984 viz., whether it has to entrust the enquiry based on the examination of the investigation report and records of the Lokayukta/Upalokayukta and the other option is entrusting to the respective disciplinary authority to initiate enquiry under Rule 12 of the Rules, 1957. When Government has option to choose either of the option cited supra, in such circumstances, Government has to disclose its mind in the entrustment order as to why it has chosen particular option i.e., in the present case, Government has to give reasons as to why it has entrusted the matter to the Upalokayukta and not entrusted to disciplinary authority. Thus, prima facie, there is non-application of mind so also non-compliance of Rule 14-A(2)(iii) of Rules, 1957. This issue has not been dealt by this Court in the decision cited by the learned counsel for the Lokayukta. Therefore, the cited decisions are in *per incuriam.* Apex Court in the case of ***DIVISIONAL CONTROLLER, KSRTC vs MAHADEVA SHETTY & ANOTHER, (2003)7 SCC 197*** in paragraph 23 has held as under:

> *"23. So far as Nagesha case[1] relied upon by the claimant is concerned, it is only to be noted that the decision does not indicate the basis for fixing of the quantum as a lump sum was fixed by the Court. The decision ordinarily is a decision on the case before the Court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Therefore, while applying the decision to a later case, the Court dealing with it should carefully try to ascertain the principle laid down by the previous decision. A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as measure of social justice. Precedents sub silentio and without argument are of no moment. Mere casual expression carry no weight at all, nor every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement having the weight of authority."*

36. Ingredient with the judgment *per incuriam* as quoted by Sir John Salmond in his 'Treatise on Jurisprudence' has aptly stated the circumstances under which a precedent can be treated as *per incuriam*. It is stated that a precedent is not binding for which it was rendered in

ignorance of a statute or a rule having the force of statute or delegated legislation.

(Emphasis Supplied)

37. Mr.Govindrajan in his book called 'Invoking the doctrine of *per incuriam'*, states that the Rule applies even though the Court knew of the statutes in question but it did not refer to and had not present to its mind the precise terms of the statute. Similarly, a Court may know all the extension of a statute and yet not appreciate its relevancy to the matter on hand, such a mistake is again *per incuriam* so as to vitiate the decision. Even the lower Court can impugn a precedent on such grounds.

38. The Apex Court in the case of **GOVERNMENT OF ANDHRA PRADESH AND ANOTHER vs B. SATYANARAYANA RAO, *(2000) 4 SCC 262*** observed as under:

> "The Rule of *per incuriam* can be applied where Court omits to consider a binding precedent of the same Court or the superior court

> rendered on the same issue or where a court omits to consider any statute while deciding that issue".

39. In **THOTA SHESHARATHNAMMA AND ANOTHER vs THOTA MANIKYAMMA (DEAD) BY LEGAL REPRESENTATIVES** reported in (1991)4 SCC 312, a two Judge Bench of Apex Court held that Three Judge Bench decision in the case of **Mst. KARMI vs AMRU,** (1972 (4) SCC 86) on *per incuriam* and observed as under:

> ".... It is a short judgment without adverting to any provisions of Section 14(1) or 14(2) of the Act. The Judgment neither makes any mention of any argument raised in this regard nor there is any mention of the earlier decision in Seth Badri Parshad vs Srimati Kanso Devi. The decision in Mst.Karmi cannot be considered as an authority on the ambit and scope of Section 14(1) and 14(2) of the Act".

40. A decision contrary to law and Rules cannot become precedent as held in the case of **UNION OF INDIA vs S K SAIGAL, (2007)14 SCC 556**. In the present cases decisions cited on behalf of the Lokayukta counsel that Government need not assign reasons while entrusting

inquiry to the Upalokayukta whereas, Rule 14-A(2)(iii) of Rules, 1957 provides for exercising option to entrust either to the Lokayukta/Upalokayukta or disciplinary authority. This part of the Rule has not been taken note of. Therefore, cited decisions on behalf of the Lokayukta counsel in **SRI JAYAPRAKASH** (supra)**, SRI GOPALAKRISHNA** (supra), **SRI GOPAL HANUMATH KASE** (supra) **and SRI VIJAY KUMAR G SULAKHE** (supra) **and SRI SHIVANAND MAGADUM** (supra) are to be held as 'judgments in per curiam' to the extent of option of entrusting inquiry to Lokayukta/Upalokayukta or disciplinary authority. In the matter of ***PAISNER VS. GOODRICH*** reported in ***(1955) 2 All ER 530*** referred in ***ICICI Bank Limited and another Vs. The Municipal Corporation of Greater Bombay and others*** reported in ***AIR 2005 SCC 3315***. In the Paisner's case Lord Denning in his judgment held as under:-

> *"When the judges of this Court give a decision on the interpretation of an Act of Parliament, the decision itself is binding on them and their*

successors. But the words which the judges use in giving the decision are not binding. This is often a very fine distinction, because the decision can only be expressed in words. Nevertheless, it is a real distinction which will best be appreciated by remembering that, when interpreting a statute, the sole function of the court is to apply the words of the statute to a given situation. Once a decision has been reached on that situation, the doctrine of precedent requires us to apply the statute in the same way in any similar situation; but not in a different situation. Whenever a new situation emerges, not covered by previous decisions, the courts must be governed by the statute and not by the words of the judges."

It is also a trite law that a point not raised before a Court would not be an authority on the said question. In **A-ONE GRANITES vs STATE OF UTTAR PRADESH,** (2001)3 SCC 537 it is stated as follows:

> "This question was considered by the Court of appeal in LANCASTER MOTOR CO. (London) Ltd. Vs BREMTH Ltd., and it wsa laid down that when no consideration was given to question, the decision cannot be said to be binding and precedents sub silentio and without arguments of no moment.

In the case of **STATE OF U. P. vs SYNTHETICS AND CHEMICALS LIMITED** (1991)4 SCC 139 at paragraphs 40 and 41, it is held as under:

> 40. 'Incuria' literally means 'carelessness'. In practice *per incuriam* appears to mean *per ignoratium*. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, '*in ignoratium* of a statute or other binding authority'. (*Young* v. *Bristol Aeroplane Co. Ltd.* [(1944) 1 KB 718 : (1944) 2 All ER 293]). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In *Jaisri Sahu* v. *Rajdewan Dubey* [(1962) 2 SCR 558 : AIR 1962 SC 83] this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from *Halsbury's Laws of England* incorporating one of the exceptions when the decision of an appellate court is not binding.
>
> 41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to

be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (*Salmond on Jurisprudence* 12th Edn., p. 153). In *Lancaster Motor Company (London) Ltd.* v. *Bremith Ltd.* [(1941) 1 KB 675, 677 : (1941) 2 All ER 11] the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in *Municipal Corporation of Delhi* v. *Gurnam Kaur*. [(1989) 1 SCC 101] The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not *ratio decidendi*. In *B. Shama Rao* v. *Union Territory of Pondicherry* [AIR 1967 SC 1480 : (1967) 2 SCR 650 : 20 STC 215] it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability

> and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.

The decisions 'sub-silentio' and 'per incuriam' are not binding. Sub-silentio decisions flow when the particular point of law involved in the decision is not perceived by the Court of present to its mind. A point nor argued or considered by Court is said to pass sub-silentio.

41. In view of the principle laid down in the aforesaid decision of the Apex Court, the cited decisions on behalf of the Lokayukta counsel are judgment *per incuriam* on the score that in the cited decisions, there was no occasion of dealing that Government had two options on receipt of investigation report insofar as entrusting the matter for holding the disciplinary proceedings to the office of the Lokayukta/Upalokayukta under Rule 11 or to disciplinary authority to hold enquiry under Rule 12 of Rules, 1957. Therefore, it is necessary to reproduce the extract of the Government Order dated 17.10.2016 as under:

3. ªÀiÁ£Àå G¥À ¯ÉÆÃPÁAiÀÄÄPÀÛgÀÄ ¸À°è¹gÀÄªÀ **zÁR¯ÉUÀ¼À£ÀÄß ¥Àj²Ã°¹zÁUÀ** D¥Á¢vÀgÀÄ zÀÄ£ÀðqÀvÉ J¸ÀVgÀÄªÀÅzÀÄ ªÉÄÃ¯ÉÆßÃlPÉÌ PÀAqÀÄ §A¢gÀÄªÀÅzÀjAzÀ , ¸ÀzÀjAiÀÄªÀgÀ «gÀÄzÀÝ E¯ÁSÁ «ZÁgÀuÉ £ÀqÉ¸À®Ä PÀ£ÁðlPÀ £ÁUÀjPÀ ¸ÉÃªÁ (ªÀVÃðPÀgÀt, ¤AiÀÄAvÀðt ªÀÄvÀÄÛ ªÉÄÃ®ä£À«) ¤AiÀÄªÀiÁªÀ½UÀ¼ÀÄ 1957gÀ ¤AiÀÄªÀÄ 14-J gÀ£ÀéAiÀÄ ªÀiÁ£Àå G¥À¯ÉÆÃPÁAiÀÄÄPÀÛjUÉ ªÀ»¸À®Ä ¸ÀPÁðgÀªÀÅ ¤zsÀðj¹zÉ. DzÀÝjAzÀ , F DzÉÃ±À.

¸ÀPÁðgÀzÀ DzÉÃ±À ¸ÀARå:£ÀDE 662 JAJ£ïªÉÊ 2016,
¨ÉAUÀ¼ÀÆgÀÄ, ¢£ÁAPÀ 17.10.2016

¥Àæ¸ÁÛªÀ£ÉAiÀÄ°è «ªÀj¹gÀÄªÀ PÁgÀtUÀ¼À »£Àß¯ÉAiÀÄ°è ²æÃ £ÀAeÉÃUËqÀ PÉ.J¸ï.©¯ï PÀ¯ÉPÀÖgï, PÀÄªÉA¥ÀÄ gÀAUÀ ªÀÄÄA¢gÀ, ©.©.JA.¦, gÁdgÁeÉÃ±Àéj ªÀ®AiÀÄ, ²æÃUÀAzsÀzÀ PÁªÀ®Ä, ¨ÉAUÀ¼ÀÆgÀÄ EªÀgÀ «gÀÄzÀÞ E¯ÁSÁ DgÉÆÃ¥ÀUÀ¼À §UÉÎ E¯ÁSÁ DgÉÆÃ¥ÀUÀ¼À §UÉÎ E¯ÁSÁ «ZÁgÀuÉAiÀÄ£ÀÄß PÉÊUÀÆ¼Àî®Ä PÀ£ÁðlPÀ £ÁUÀjPÀ ¸ÉÃªÁ (ªÀVÃðPÀgÀt, ¤AiÀÄAvÀæt ªÀÄvÀÄÛ ªÉÄÃ®ä£À«) ¤AiÀÄªÀiÁªÀ½UÀ¼ÀÄ 1957gÀ ¤AiÀÄªÀÄ 14-J gÀ£ÀéAiÀÄ ªÀiÁ£Àå G¥À ¯ÉÆÃPÁAiÀÄÄPÀÛjUÉ ªÀ»¹ DzÉÃ²¹zÉ.

Extract of the Government Order dated 14.09.2016 reads as under:

4. ªÀiÁ£Àå G¥À ¯ÉÆÃPÁAiÀÄÄPÀÛgÀÄ ¸À°è¹gÀÄªÀ ªÀgÀ¢ ºÁUÀÆ **zÁR¯ÉUÀ¼À£ÀÄß**

¥Àj²Ã°¹ D¥Á¢vÀgÀÄ zÀÄ£ÀðqÀvÉ J¸ÀVgÀÄªÀÅzÀÄ ªÉÄÃ¯ÉÆßÃIPÉÌ PÀAqÀÄ §A¢gÀÄªÀÅzÀjAzÀ, ¸ÀzÀjAiÀÄªÀgÀ «gÀÄzÀÝ ²¸ÀÄÛ £ÀqÀªÀ½PÉ ºÀÆqÀ®Ä ºÁUÀÆ E¯ÁSÁ «ZÁgÀuÉAiÀÄ£ÀÄß £ÀqÉ¸À®Ä PÀ£ÁðlPÀ £ÁUÀjPÀ ¸ÉÃªÁ (ªÀVÃðPÀgÀt, ¤AiÀÄAvÀæt ªÀÄvÀÄÛ ªÉÄÃ®ä£À«) ¤AiÀÄªÀiÁªÀ½UÀ¼ÀÄ 1957gÀ ¤AiÀÄªÀÄ 14-J gÀ£ÀéAiÀÄ ªÀiÁ£Åå G¥À¯ÉÆÃPÁAiÀÄÄPÀÛjUÉ ªÀ»¸À®Ä ¸ÀPÁðgÀªÀÅ ¤zsÀðj¹zÉ. DzÀÝjAzÀ, F DzÉÃ±À.

¸ÀPÁðgÀzÀ DzÉÃ±À ¸ÀASÉå: £ÀDE 588 JAJ£ïªÉÊ 2016

¨ÉAUÀ¼ÀÆgÀÄ, ¢£ÁAPÀ 14.09.2016

¥Àæ¸ÁÛªÀ£ÉAiÀÄ°è «ªÀj¹gÀÄªÀ CA±ÀUÀ¼À »£Àß¯ÉAiÀÄ°,è ²æÃ J£ï.eÉ. £ÀlgÁeï, PÀgÀ ªÀ¸ÀÆ°UÁgÀ (Tax Inspector) ¸ÀºÁAiÀÄPÀ PÀAzÁAiÀiÁ¢üPÁjAiÀÄªÀgÀ PÀbÉÃj, ¨ÉÆªÀÄä£ÀºÀ½î ªÀ®AiÀÄ, §È°Àvï ¨ÉAUÀ¼ÀÆgÀÄ ªÀÄºÁ£ÀUÀgÀ ¥Á°PÉ, ¨ÉÆªÀÄä£ÀºÀ½î ªÀ®AiÀÄ, ¨ÉAUÀ¼ÀÆgÀÄ EªÀgÀ «gÀÄzÀÞ ªÉÄÃ°£À DgÉÆÃ¥ÀUÀ¼À PÀÄjvÀÄ .. E¯ÁSÁ DgÉÆÃ¥ÀUÀ¼À «ZÁgÀuÉAiÀÄ£ÀÄß PÉÊUÀÆ¼Àî®Ä PÀ£ÁðlPÀ £ÁUÀjPÀ ¸ÉÃªÁ (ªÀVÃðPÀgÀt, ¤AiÀÄAvÀðt ªÀÄvÀÄÛ ªÉÄÃ®ä£À«) ¤AiÀÄªÀiÁªÀ½UÀ¼ÀÄ 1957gÀ ¤AiÀÄªÀÄ 14-J gÀ£ÀéAiÀÄ ªÀiÁ£Åå G¥À¯ÉÆÃPÁAiÀÄÄPÀÛjUÉ ªÀ»¹ DzÉÃ²¹zÉ.

(Emphasis supplied)

Perusal of the aforesaid orders it is evident that author seems to have examined reports and documents. Gist of the examination/perusal of documents are not forthcoming. The word 'peruse' according to the Chambers Twentieth Century Dictionary, revised 1959 Edition, means: "(Shak) to pass in scrutiny one by one or piece by piece; to examine in detail; to revise; to read attentively or critically; (loosely), to read." The word 'peruse', used in Sub-section (4) of Section 145, Cr.P.C. therefore, connotes "to examine in detail". The proper meaning to give to the word ' peruse'. As such would be "to go through critically", that is, "to read at attentively and examine critically in detail, one by one." This appears to be the correct meaning and the true scope and effect of sub-section (4) of Section 145, and the real test to be applied in judging whether a Magistrate has considered he affidavits filed as required by Sub-section (4) of Section 145. (**Sohan Mushar vs Kailash Singh,** AIR 1962 Patna 249). In the present cases, Government is exercising quasi judicial function under Act, 1984 read with Rules, 1957. Therefore, minimum

requirement is disclosure of examination of report submitted under Section 12(3) of Act, 1984 and related documents. However, in the present cases the aforesaid Government Orders do not reveal examination by the author of the orders. Even in the note sheets (files), such examination is not forthcoming.

42. Thus, petitioners have made out prima facie case to interfere with the respective Government Orders dated 17.10.2016 and 14.09.2016 insofar as entrusting the disciplinary proceedings to the Upalokayukta on the score that Government has not complied in toto the provisions laid down in Section 12(4) of Act, 1984 read with Rule 14-A(2)(iii) of Rules, 1957. Section 12(4) of Act, 1984 mandates for the reason that competent authority 'shall' examine the records. Even though under Rule 14-A(2)(iii) of Rules, 1957 the words "may" occur, at the same time, one cannot ignore that Government had the option on receipt of investigation report of the Lokayukta/Upalokayukta either to entrust the matter

under Rule 11 to the Lokayukta/Upalokayukta or under Rule 12 to the disciplinary authority.

Under Section 12(4) of the Act, 1984 'competent authority shall' is incorporated so also under Rule 14-A(2)(iii) of Rules, 1957 the word used is 'may'. Therefore, it is necessary to take note of the words 'may', 'shall' and 'must'. The preliminary key to the problem where a statutory provision is mandatory or directory, is the intention of the law-maker as expressed in the law itself. The reason behind the provision may be a further aid to the ascertainment of that intention. If the legislative intent is expressed clearly and strongly in imperative words, such as the use of 'must' instead of 'shall', that will itself be necessary to pursue the enquiry any further. If the provision is couched in prohibitive or negative language, it can rarely be directory; the use of peremptory language in a negative form is *per se* indicative of the intent that the provision is to be mandatory. The expressions 'may' and 'shall' have often been the subject of

constant and conflicting interpretation. 'May' is a permissive or enabling expression, but there are cases in which, for various reasons, it has been held that as soon as the person who is within the statute has been entrusted with the power, it becomes his duty to exercise it. The expression 'may' has often been construed as constituting a command and as being indicative of a deferential linguistic usage to signify a command.

In **Kind v. Mitchell, Ridley**, J.((1913)1 KB 561) said: "If a right is conferred upon a person and another person is empowered by the word 'may' to recognize the right, not because the empowering words oblige him but because it is his duty to recognize the right, in that sense it is true to say that 'may' is equivalent to 'must'.

Normally the word 'may' is directory and 'shall' is mandatory. But sometimes the word 'may' is used as mandatory and 'shall' as directory according to the context

and the object, keeping in view the public interest and injurious effect of non-compliance. But where the word 'shall' and 'may' have been used in the same section, in that event, it is manifest that the Legislative has used both the expressions after ascertaining its meaning. In that event, it is not open to the Court to interpret the word 'shall' as directory and 'may as mandatory **(NATTHU v. AMAR NATH AGARWAL AND OTHERS,** AIR 1995 All 420 at p.424:

> The word 'may' may also be used in the sense of 'shall' or 'must' by the Legislature while conferring power on a high dignitary. When the context shows that the power is coupled with an obligation, 'the word may' which denotes discretion should be construed to mean a command". The use of the word 'may' in such cases is 'out of deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed. It was, therefore, held that the words 'the Government may, in respect of a gazetted Government servant on his own request, refer his case to the Tribunal'. In the context of Rule 4(2) of the U.P Disciplinary Proceedings (Administrative Tribunal) Rules, 1947, conferred a power coupled with an of obligation on the Governor to exercise the power when a request was made by a gazette Government servant in that behalf and that the Governor had no discretion in the matter." Rule 30 of the Rajasthan Minor Mineral Concession

Rules, 1955, which is to the effect that a mining lease may be granted for a period of five years unless the applicant himself desires a short period, has been construed to confer no discretion on the Government to fix a period . A proviso to the rule dealing with renewal has been similarly construed. Section 5(3) of the Central Provinces and Berar Revocation of Land Revenue Exemptions Act, 1948 provided that the State Government may make a grant of money or pension- for suitable maintenance of any family of a dependant from a former ruling Chief. In construing this provision it was held that except in those cases where there were good grounds for not granting the pension, the Government was bound to make a grant to those who fulfilled the request conditions and the word 'may' had to be read as 'must' . It was also held that the Act laid to duty to be performed in a judicial manner. Clause 20 of the Cotton Textiles (Central) Order ,1948 authorized the Textiles Commissioner to issue direction to manufacturers regarding the classes or specifications of cloth or yarn and the maximum and the minimum quantities there of which they shall or shall not produce during such periods as may be specified in the directions. It was held that the power conferred to issue directions is coupled with the duty to specify the particular period for which the directions shall be operative and directions issued without specifying the period will be ultra wires". But, may will not be construed an mandatory if such a construction would defeat the purpose of the Act or would lead to unjust results. "Further, if the word 'may' was substituted in place of 'shall' during the Bill's progress in Parliament, it may not be possible to construe 'may' or 'shall'.

> The principle that the word 'may' is sometimes used in the sense of shall or must., while conferring power of high dignitary out of deference to him, has also been applied when power is conferred on Parliament to enact a law. Interpreting Article 124(5) of the Constitution, which provides that Parliament may by law regulates the procedure, for the presentation of an address and for the investigation and proof of the misbehavior or incapacity of a Judge, it has been held, that it is an enabling provision for the procedure for presentation of an address. 'but' it is a compulsive provision for providing the procedure 'for the investigation and proof of the misbehavior or incapacity of a Judge.

Apex Court in the case of **CHALUVEGOWDA AND OTHERS vs STATE BY CIRCLE INSPECTOR OF POLICE** reported in (2012)13 SCC 538, it is held as under:

> 12. Before considering the issue raised in this case, it is necessary to refer to Rules relating to the appointment of an amicus curiae. These Rules find a place in the High Court of Karnataka Rules, 1959 ["the Rules" for short]. Rule 2A was introduced by Notification No. LCA-1/480/92 dated 1.06.1999 w.e.f. 24.06.1999, and reads as under:
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> "2-A. (i) Wherein a criminal case before the High Court the accused is not represented by an Advocate and if the Court is satisfied that the accused has no sufficient means to engage an

Advocate or where the accused remains absent and the interest of justice so requires, the Court may appoint any Advocate from the panel prepared under Clause (iv) below to represent the accused in such case at the expense of the State.

(ii) The fact and the date of appointment of the amicus curiae under clause (i) above shall be noted in the order sheet

(iii) The amicus curiae shall be entitled to inspect the records of the case, the office shall furnish him with necessary papers and the Court shall allow him adequate time for presenting the case for the accused.

(iv) Panel of Advocates of not more than ten, who are willing and suitable, may be prepared and approved by the Chief Justice every year in January. However, a panel once prepared shall remain in force until fresh panel of Advocates is prepared. No Advocate who has put in not less than five years of practice at the Bar shall be included in the panel.

(v)....."

The Clause 2-A(i) of the Rules mandates the High Court in criminal cases, where accused is not represented by an Advocate and is not possessed with sufficient means to engage an Advocate or where the accused remains absent though notified of hearing of the appeal to appoint any Advocate from the panel of Advocates prepared, as provided under Clause IV of the Rules. Though Clause 2-A(i) uses the expression "may", the same requires to be interpreted as laying down mandatory

> direction to the Court to engage an Advocate, if the conditions laid down in the Rule are otherwise satisfied. See Bashira v. State of U.P., AIR 1968 1313.

In view of the above analysis, Section 12(4) of Act, 1984 and Rule 14-A(2)(iii) of Rules, 1957 are mandatory. Even though under Rule 14-A(2)(iii) of Rules 1957 word used is 'may', it is to be read as 'must/shall', having regard to options available to Government.

43. On this short ground, Government Orders dated 17.10.2016 and 14.09.2016 in the respective Writ Petitions are liable to be set-aside. Consequently, the matters require to be remanded to the Government to re-examine the investigation reports and other related documents including acquittal orders so as to decide regarding entrusting the disciplinary proceedings to the Upalokayukta or disciplinary authority. Thus, Government in the entrustment order should reveal application of mind in examination of investigation report submitted under Section 12(3) while

invoking Section 12(4) of the Act, 1984. Further, Rule 14-A(2)(iii) of Act, 1957 empowers Government to choose either to entrust to Lokayukta/Upalokayukta to hold enquiry under Rule 11 of Rules, 1957 or to the respective disciplinary authority to hold enquiry under Rule 12 of Rules, 1957. In such circumstance, Government must disclose the reasons as to why enquiry is being entrusted to Lokayukta/Upalokayukta. Such opinion is not forthcoming in the impugned Government Orders dated 17.10.2016 and 14.09.2016. Therefore, petitioners have made out prima facie case that there is non-compliance to Section 12(4) of Act 1984, read with Rule 14-A(2)(iii) of Rules 1957.

ORDER

(i) Government order dated 17.10.2016 and Article of Charge dated 21.11.2016 vide Annexures-E and G in W.P.No.48384/2017 and Government order dated 14.09.2016 and Article of Charge dated 07.11.2016 vide Annexures-J and K in W.P.No.61697/2016 are set aside.

(ii) Writ petitions are allowed.

(iii) Petitioners are permitted to file their say on the investigation reports submitted under Section 12(3) of Act, 1984 and on any other issues, within a period of four weeks from the date of receipt of this order.

(iv) State Government is directed to examine Upalokayukta's report submitted under Section 12(3) of Act, 1984 afresh under Section 12(4) of Act 1984 read with Rule 14-A(2) (iii) of Rules, 1957 and proceed in accordance with law. If Government is of the opinion that disciplinary proceedings is warranted, in that event, the Disciplinary proceedings shall be completed within a period of six months from the date of entrustment if any, in accordance with law.

Sd/-
JUDGE

Brn