

OA.No.170/01526/2018/CAT/BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01526/2018

DATED THIS THE 13TH DAY OF NOVEMBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI DINESH SHARMA, MEMBER (A)

Smt. Sushma Godbole, IAS,
W/o Sri H.Channabasanagouda,
Aged about 49 years,
Special Deputy Commissioner-1,
Bengaluru Urban district
Bengaluru
Residing at 006, Pushpanjali Apartment,
1st Main, 1st Cross,
Chamarajapet,
Bengaluru – 560 018

.....Applicant

(By Advocate M/s Subbarao & Co.)

Vs.

1. The Union of India
Represented by its Secretary,
Department of Personnel & Training,
New Delhi

2. The State of Karnataka
By its Principal Secretary,
Department of Personnel
And Administrative Reforms,
Vidhana Soudha,
Bengaluru – 560 001

3. Sri Jagadish M.K (KAS)
(Senior Scale) under Rule 32 of KCSR's,
Working as Addl. Deputy Commissioner,
(Rehabilitation)
Madikeri,
Kodagu District

....Respondents

(By Shri R.B. Sathyanarayana Singh, Counsel for Respondent No. 2)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

We had taken up this matter originally on 20.09.2018 and had directed that status quo to be maintained and notice was issued by dasti. Apparently the Government of Karnataka had issued a proceedings for the creation of posts of Special Deputy Commissioners of IAS cadre in place of the existing posts of Special Deputy Commissioners to try the case of land grabbing under Section 136 (3), 67 (2) and 39 of the Karnataka Land Revenue Act 1964 of Bangalore Urban District. We quote from the same:

“PROCEEDINGS OF THE GOVERNMENT OF

KARNATAKA

SUBJECT: Creation of the posts of Special Deputy Commissioners of IAS Cadre in place of the existing posts of Special Deputy Commissioners, to try the case of land grabbing u/s 136(3), 67(2) and 39 of the Karnataka Land Revenue Act 1964, of Bangalore Urban District, regarding.

READ: 1.Government Notification No.RD 03ASD1999 dated 30.1.1999.

2.Government Notification No.RD 711 LGB 2009 (P) dated 4.6.2010

3.Government Notification No.RD 400 ASD2012 dated 10.10.2011

4.Government Order No.RD 709 LGBD2012 dated 12.9.2013

5.Order of the Hon'ble High Court of Karnataka in WP.No.51551-52/2013(KLR-RES-PIL)dated 26.8.2014

6.Letter of the DC Bangalore Urban District No.DM/CR/37/2014-15 dated 20.9.2014

7.Government Order No.RD 807 ASD2014 Bangalore dated 30.9.2014

PREAMBLE:

Government vide their Order dated 30.1.1999 had allocated work between the Deputy Commissioner and the Special Deputy Commissioner of Bangalore District and further delegated to the Special Deputy Commissioners the powers to conduct Court proceedings under Sec.136(3) of the Karnataka Land Revenue Act 1964.

Further Government vide their order dated 4.6.2010 read at (2) above, created three temporary posts of Special Deputy Commissioners of KAS Cadre for expeditious disposal of cases of land encroachment in Bangalore urban district and delegated them the power to inquire into cases under Sec. 136(3) of the Karnataka Land Revenue Act 1964. These posts were continued from time to time and these posts were continued till 12.9.2013 vide GO ate Read (4) above.

Meanwhile, the Hon'ble High Court in

WP.No.7021/2011 dated 26.5.2011, Para-6 has recorded thus **“the post of Special Deputy Commissioner has now become synonym for corruption, nepotism and arbitrariness of which fact this Court can take judicial notice and it is high time a governance worth its name having some semblance of commitment to maintenance of rule of law looks into such anarchic exercise of power by these special deputy commissioners and takes corrective measures, instead of driving each and every effected person to seek for relief in writ jurisdiction before the High Court.”** Pursuant to this observation, Government vide their order dated 10.10.2011 read at (3) above, modified their earlier order of work allocation between the Deputy Commissioner and the Special Deputy Commissioner and restored the powers under Sec. 136(3) of the Karnataka Land Revenue Act 1964 to the Deputy Commissioner, Bangalore urban district by withdrawing the same from the Special Deputy Commissioner.

In spite of withdrawing the powers under Sec. 136(3) of the Karnataka Land Revenue Act 1964 vide G.O dated 10.10.2011, from the Special Deputy Commissioners, the Special Deputy Commissioners continued to exercise the same beyond 10.10.2011. The Hon'ble High Court in WP.No.51551-52/2013 (KLR-RES-PIL) dated 26.8.2014 inquired into the same and Para 3 of its Order is reproduced below

“3. Therefore, the Notification bearing No.RD 400 ASD2012 dated 10.10.2011 reallocates the work between the Deputy Commissioner and the Special Deputy Commissioner, Bangalore urban district and clearly confers power under Section 136(3) of the Karnataka Land Revenue Act 1964 upon the Deputy Commissioner. The above letter issued by the Principal Secretary to the Deputy Commissioner, Bangalore urban district clarifies the Government view that subsequent to the Notification No.RD 400 ASD2011 dated 10.10.2011, the Special Deputy Commissioner appointed pursuant to the Government order No.RD711, RD 290 and RD 709 were not required to exercise power under Section 136(3) of the Karnataka Land Revenue Act 1964. Accordingly, the Notification No.RD 400 ASD2011 dated 10.10.2011 shall be given complete effect and, the Deputy Commissioner and the Special Deputy Commissioner shall exercise powers accordingly.”

In lieu of the Hon'ble High Court order dated 26.8.2014 above and the legal issues arising out of the work allocation

under Sec 136 (3) of KLR Act 1964, the Deputy Commissioner, Bangalore urban district submitted a detailed proposal to the Government that there are a total of 5412 cases relating to appeals under PTCL. Inam, Arbitration, verification and authentication of documents other miscellaneous cases and other pending cases filed by some parties in the Hon'ble High Court, and being remanded by it for time bound enquiry, and that a few Contempt of Court cases are also being filed due to non disposal of cases within the stipulated time due to administrative problems, and work pressure. Further there are many cases arising out of several Writ Petitions and Writ Appeals filed in cases of Land grabbing wherein the Hon'ble High Court has directed to enquire into these cases under Section 67(2) of the Karnataka Land revenue Act 1964. About 800 cases have been disposed of in the Court of Deputy Commissioner in the past 3 years, and this disposal amounting to 16% is at a slow pace and that this is causing hardship to the parties, advocates and the general public, and hence the need to create the post of an IAS cadre Officer for the speedy disposal of the above mentioned cases.

On perusal of the Hon'ble High Court's order dated 26.8.2014 and the proposal of the Deputy Commissioner, Government in partial modification of the their order at Read(7) above, revoked the order No.RD 400 ASD 2011 dated 10.10.2011, and further, cancelled 2 posts of Special Deputy Commissioners created vide RD 711 LGB 2009(P) dated 4.6.2010, upgraded the remaining one post of Special Deputy Commissioner to that of an IAS Cadre and reallocated the work.

Further, the High Power Committee meeting held on 7.10.2014 under the Chairmanship of the Hon'ble Chief Minister to discuss the action taken on the Report submitted by Joint Legislature Committee under the Chairmanship of Sri AT.Ramaswamy and effective regulation of land grabbing of valuable land in Bangalore Urban District discussed the same and the huge pendency of quasi judiciary cases of land grabbing in Bangalore Urban District in detail, and decided to create two additional posts of IAS cadre (appeals) in addition to the existing post of Deputy Commissioner to facilitate expeditious disposal of the afore mentioned cases.

*In lieu of the orders of the Hon'ble High Court in WP.No.7021/2011 dated 26.5.2011 WP.No.51551-52/2013 dated 26.8.2014, opinion of the Dept. of Law and Parliamentary Affairs was sought, The Law Department opined that **it is not right to upgrade tow posts of Deputy Commissioners as Deputy Commissioner***

(Appeal-1) and (Appeal-2), instead Section 9 of the Karnataka Land revenue Act 1964 provides for posting Special Deputy Commissioners who may be empowered to exercise some of the powers of the Deputy Commissioner, for a part or whole of the District. Further, it added "The Division Bench of the Hon'ble High Court in their order dated 26.8.2014 has nowhere observed that the posting of the 3 Special Deputy Commissioners or the powers vested on them vide GO read above is illegal. Its order is restricted to the GO dated 10.10.2011 by which 3 Special Deputy Commissioners have no powers to exercise powers under Section 136(3) of the Karnataka Land Revenue Act 1964 and hence the orders passed by them subsequent to 10.10.2011 are null and void as the Deputy Commissioner and the Special Deputy Commissioners were to exercise powers vested with them in accordance with the Govt. Order dated 10.10.2011 only. Hence, the Deputy Commissioner and the officers appointed by Government alone can exercise powers under Section 136(3) and review all the cases passed after 10.10.2011"

In view of the orders of the Hon'ble High Court, proposal of the Deputy Commissioner, opinion of the Law Dept. Government have decided to appoint 2 IAS cadre officers as Special Deputy Commissioners in addition to the Deputy Commissioner and delegate them the powers to remove encroachments and powers under Section 136(3) 67(2), 39,192(A), 192(B). Hence this order.

Government Order No.RD 807 ASD2014 Bangalore dated 30.9.2014

Under the circumstances mentioned in the preamble, Government hereby revokes Government order Nos.RD 400 ASD2011 dated 10.10.2011 and No.RD 807 ASD2014 dated 30.9.2014

The post of the Special Deputy Commissioner in the Office of the Deputy Commissioner , Bangalore Urban District as renamed as Special Deputy Commissioner-1 IAS cadre.

Further, two of the three temporary posts of Special Deputy Commissioners created vide Govt. Order dated 4.6.2010 are hereby cancelled and the remaining one post of Special Deputy Commissioner post is renamed as Special Deputy Commissioner-2 IAS cadre in exercise of the powers vested with Govt. under Sec. 9 of the Karnataka

Land Revenue Act 1964, with immediate effect and until further orders.

Following is the delegation of powers and work allocation to the Deputy Commissioner, Special Deputy Commissioner-1 IAS cadre and Special Deputy Commissioner-2 IAS cadre, Bangalore Urban District

<i>Deputy Commissioner Bangalore Urban District</i>	<i>Special Deputy Commissioner-1 (IAS cadre)</i>	<i>Special Deputy Commissioner-2 (IAS cadre)</i>
<i>1</i>	<i>2</i>	<i>3</i>
<i>Bangalore District</i>	<i>Bangalore North Sub-Division</i>	<i>Bangalore South Sub-Division</i>
<i>District Administration, Magisterial powers, Law and Order</i>	<i>Karnataka Land Revenue Act 1964 Section 136(3), 67(2) (Suomoto proceedings) and Section 39, section 192 (A) and (B), section 94(3)</i>	<i>Karnataka Land Revenue Act 1964 Section 136(3), 67(2) (Suomoto proceedings) and Section 39, section 192 (A) and (B), section 94(3)</i>
<i>Revision petitions u/s 136(3) of the Karnataka Land Revenue Act 1964</i>	<i>Arbitration matters</i>	<i>Arbitration matters</i>
<i>All other matters which are not specifically entrusted with the Special Deputy Commissioners 1 & 2</i>	<i>All matters relating to Abolition of Inam tenures under Inam Abolition Act and Rules</i>	<i>All matters relating to Abolition of Inam tenures under Inam Abolition Act and Rules</i>
	<i>Rehabilitation of displaced persons under various projects</i>	<i>Rehabilitation of displaced persons under various projects</i>
	<i>First appeal u/s 18 (10 of Right to Information Act, 2005</i>	<i>First appeal u/s 18 (10 of Right to Information Act, 2005</i>

As per the Direction of the of the Hon'ble High Court in

its order dated 26.8.2014, all the matters heard and disposed of under Section 136(3) after 10.10.2011 without being vesting with the powers, to be reallocated among the concerned officers above.

The posts of Special Deputy Commissioner-1 (IAS cadre) and Special Deputy Commissioner-2 (IAS cadre) are not subservient to the post of the Deputy Commissioner Bangalore Urban District and shall discharge their duties independently.

*By order and in the name of the
Governor of Karnataka*

*Sd/-
(K. S. Sarojamma)
Deputy Secretary to Government,
Revenue Department*

(Services 3, DM and Registration and Stamps)

To,

1. *Accountant General (A&E), Karnataka, Bangalore*
 2. *Chief Secretary, Vidhana Soudha,*
 3. *Additional Chief Secretary to Govt., Vidhana Soudha, Bangalore*
 4. *Principal Secretary to Govt., DPAR*
 5. *Principal Secretary/Secretary to Hon'ble Chief Minister*
 6. *Secretary to Govt. Law Dept./Additional Secretary-2 Law Dept"*
2. We find that these posts are IAS cadre posts and found that these are orders passed consequent to the orders passed by the Hon'ble High Court in Writ Petition No. 7021/2011 dated 26.05.2011, therefore, we had granted a further interim order that applicant will continue as Deputy Commissioner-1 at Bangalore for another period of time. Thereafter the 1st and 2nd respondent appeared and filed a reply to the interim prayer on behalf of the respondent state but then since this interim application was also basically inclusive of all tenets of the final order we had asked the learned counsel whether he wishes to file a fresh reply statement and on receiving an answer in negative proceeded to hear the matter. He produces the original file and the file do not disclose any specific malafides on the part of the

Government. No specific malafides is also alleged against the Government by the applicant other than saying that the 3rd respondent, who is the party respondent, had managed to assert a post to which he had no right. We find from the order of the Hon'ble High Court and the consequential Government order reproduced above that this is a post reserved for IAS personnel only. Therefore, without any doubt, no KAS personnel can be appointed to this post and particularly in view of the great sensitivity to be attached to it consequent to the orders passed by the Hon'ble High Court. Therefore *prima facie* this transfer will not lie. It is therefore quashed and until further orders to be passed by the Government on requisite and significant reason applicant to be continued at that place for the time being as a cadre post can be held by a non-cadre personnel only on very limited exceptions and not as a general rule.

3. The OA is allowed to this limited extent. No order as to costs.

(DINESH SHARMA)

MEMBER (A)

(DR.K.B.SURESH)

MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/01526/2018

Annexure A1 Copy of the order dated 13.07.2018

Annexure A2 Copy of the CTC dated 19.07.2018

Annexure A3 Copy of the order dated 15.09.2018 passed by the 2nd respondent

Annexure A4 Copy of the notification dated 28.01.2014 publishing the amended IAS (Cadre) Rules, 1954

Annexures with reply statement

Nil

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