

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24<sup>TH</sup> DAY OF JULY, 2015

BEFORE

THE HON'BLE MR. JUSTICE A S BOFANNA

WRIT PETITION NO.712/2015 (GM-TEN)

c/w

WRIT PETITION NO.54411/2014 (GM-TEN)

W.P.NO.712/2015

**BETWEEN:**

M/S. SHARP WATCH INVESTIGATION AND  
SECURITY SERVICES,  
NO.17, 1<sup>ST</sup> FLOOR, 8<sup>TH</sup> CROSS,  
KAMAKSHI HOSPITAL ROAD,  
SARASWATHIPURAM,  
MYSORE-570 009.  
REP: BY ITS PROPRIETOR  
SRI. M. NAGARAAJ  
AGE 40 YEARS

**... PETITIONER**

(BY SRI. D L JAGADISH, SR.COUNSEL FOR  
SRI LOHITASWA BANAKAR)

**AND:**

1. STATE OF KARNATAKA  
DEPARTMENT OF HEALTH AND  
FAMILY WELFARE AND MEDICAL  
EDUCATION AND APPELLATE AUTHORITY  
VIKASAS SOUDHA,  
DR. AMBEDKAR ROAD,  
BANGALORE-560 001.  
REP: BY ITS PRINCIPAL SECRETARY.
2. THE DIRECTOR  
SHIMOGA INSTITUTE OF MEDICAL

SCIENCES, SAGAR ROAD,  
SHIMOGA-577 201.

**... RESPONDENTS**

(BY SRI. VIJAYAKUMAR A PATIL, AGA. FOR R1  
SRI S B TOTAD, ADV. FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, WITH A PRAYER TO QUASH THE IMPUGNED TENDER NOTIFICATION DATED 18.12.2014 ISSUED BY THE R-2 VIDE ANN-S AND QUASH THE IMPUGNED SHOW CAUSE NOTICE DT: 28.11.2014 VIDE ANN-Q AND ALSO QUASHES THE ANN-R BOTH ISSUED BY THE R-2.

**W.P.NO.54411/2014**

**BETWEEN:**

SRI M. NAGARAJ  
AGED ABOUT 43 YEARS,  
PROP: M/S SHARP WATCH INVESTIGATION  
AND SECURITY SERVICES,  
NO.17 1 FLOOR, 8<sup>TH</sup> CROSS,  
KAMAKSHI HOSPITAL ROAD,  
SARASWATHIPURAM,  
MYSORE-570 0009.

**... PETITIONER**

(BY SRI. D L JAGADISH, SR.COUNSEL FOR  
SRI L.CHITASWA BANAKAR)

**AND:**

1. STATE OF KARNATAKA  
DEPARTMENT OF HEALTH AND  
FAMILY WELFARE AND MEDICAL  
EDUCATION AND APPELLATE AUTHORITY,  
VIKASA SOUDHA,  
DR. AMBEDKAR ROAD,  
BANGALORE-560 001.  
REP. BY ITS PRINCIPAL SECRETARY.
2. THE DIRECTOR,  
SHIMOGA INSTITUTE OF  
MEDICAL SCIENCES,  
SAGAR ROAD, SHIMOGA-577 201.

3. THE DIRECTOR AND PRESIDENT  
OF TENDER COMMITTEE,  
SHIMOGA INSTITUTE OF  
MEDICAL SCIENCES, SAGAR ROAD,  
SHIMOGA-577 201.
4. THE MEDICAL SUPERINTENDENT  
AND MEMBER OF TENDER COMMITTEE,  
SHIMOGA INSTITUTE OF  
MEDICAL SCIENCES, SAGAR ROAD,  
SHIMOGA-577 201.
5. THE FINANCIAL ADVISOR AND MEMBER  
OF THE TENDER COMMITTEE,  
SHIMOGA INSTITUTE OF  
MEDICAL SCIENCES, SAGAR ROAD,  
SHIMOGA-577 201.
6. THE CHIEF ADMINISTRATIVE OFFICER AND  
MEMBER OF THE TENDER COMMITTEE,  
SHIMOGA INSTITUTE OF  
MEDICAL SCIENCES, SAGAR ROAD,  
SHIMOGA-577 201.
7. THE RESIDENT MEDICAL OFFICER AND  
MEMBER OF THE TENDER COMMITTEE,  
SHIMOGA INSTITUTE OF  
MEDICAL SCIENCES, SAGAR ROAD,  
SHIMOGA-577 201.
8. SURAKSHA SECURITY SERVICES,  
PRASHANTH BUILDING,  
OPP:GOVERNMENT BOYS HIGH SCHOOL,  
R. C. ROAD, HASSAN-573 201.  
REP. BY ITS PARTNER  
MR. SURESH M R.

**... RESPONDENTS**

(BY SRI. VIJAYAKUMAR A PATIL, AGA. FOR R1  
SRI S B TOTAD, ADV. FOR R6 & 7  
SMT. VANI H, ADV. FOR R8)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, WITH A PRAYER TO QUASH THE IMPUGNED ORDER DTD 13.11.2014 PASSED BY THE R-1 THE APPELLATE AUTHORITY AND PRINCIPAL SECRETARY TO THE GOVERNMENT, HEALTH AND FAMILY WELFARE AND MEDICAL EDUCATION DEPARTMENT, BANGALORE WHICH IS PRODUCED AT ANNEX-P AND ETC.

THESE WRIT PETITIONS COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

### **ORDER**

The petitioner in both these petitions is the same. Though the petitioner in W.P.No.54411/2014 has filed the petition in his personal name, W.P.No.712/2015 is filed in the name of the Enterprise owned by the petitioner.

2. The petitioner has responded to the tender notification issued by the second respondent. At the first instance, the petitioner as well as M/s Suraksha Security Services were held technically qualified and the tender offered by them was considered as responsive. However, the said M/s Suraksha Security Services being aggrieved by the consideration of the tender submitted by the petitioner filed an appeal before the first respondent as provided under Section 16 of KTPP Act. In the said appeal, the Appellate Authority on taking note of the fact

that Sri M.S. Hallur who had certified the accounts of the petitioner was not a registered Chartered Accountant, has arrived at the conclusion that the Tender Accepting Authority was not justified in coming to the conclusion that the tender submitted by the petitioner herein was responsive. It is in that view, by the order dated 13.11.2014, the Appellate Authority has allowed the appeal and set aside the order awarding the tender to the petitioner herein. The said order is assailed in W.P.No.54411/2014.

3. The petitioner thereafter having noticed that the petitioner had been misled by the said Chartered Accountant has registered certain complaints and has got his accounts re-certified by M/s Gothamachand & Associates. In that light, claiming to be qualified and contending that the decision taken by the Tender Accepting Authority was justified is before this Court. In

the connected petition the petitioner is aggrieved by the notice issued to take action and black list him.

4. Though several contentions have been urged in both these petitions, the issue revolves around the fact as to whether the reason assigned by the Appellate Authority in allowing the appeal is justified or not. A perusal of the order passed by the Appellate Authority relating to this aspect reads as hereunder:

“2. The main contention of the Appellant is that the relevant documents furnished by the Appellant-7 are false. In this regard, he has referred to the Turnover and I.T. Certificate documents of one Sri M.S. Hallur claiming to be a Chartered Accountant and signing certificates as Auditor and Tax Consultant to the Respondent-7, with regard to the Registration No. of the said person, it is stated by the Respondent-7 that he holds Institute of Chartered Accountants of India (ICAI) Reg. No.025489. However, it is noted that the same

registration as a Chartered Accountant is that of one Mr. K.S. Kailasananth of Chennai who does not hold a Certificate of Practice (COP) from the (ICAI). This fact is verifiable from the ICAI database and it is fairly agreed by the Counsel for Respondent-7 that for practicing as a Chartered Accountant, it is necessary to have both Registration and COP from the ICAI. In the absence of these, none can issue the Certificate.”

5. A perusal of the reason as extracted would disclose that the said Sri M.S. Hallur was not registered with the number that had been indicated as the number on which he was claiming to be a registered Chartered Accountant. As against the said observation made by the Appellate Authority, there is no other material available before this Court to indicate that the said observation is erroneous and Sri M.S. Hallur is registered under the same registered number referred to therein. That apart, what is also to be noticed is that the petitioner in the

connected petition has relied upon the accounts certified by M/s Gothamachand & Associates pertaining to the very same years for which the earlier certification had been obtained from Sri M.S. Hallur.

6. If that be the position, even if the accounts as certified at the first instance were correct, in view of the subsequent certification as contended by the learned counsel for the petitioner, the same cannot be accepted as an appropriately certified account at this juncture. The need for producing the appropriate documents to consider the tender as responsive is as on the date the tenders are opened and the consideration is made by the Tender Accepting Authority.

7. From the facts as noticed above, as on the date when the Tender Accepting Authority evaluated the tender documents of the persons who had responded including the petitioner herein, the accounts as submitted



by the petitioner was not certified by a Chartered Accountant who was registered, which was the requirement to consider the documents to be valid.

8. If that be the position, the order dated 13.11.2014 passed by the Appellate Authority would not call for interference. Though I have expressed the said opinion, it is clarified that in view of the subsequent action taken by the petitioner to lodge a complaint with the Chartered Accountants' Association to initiate action against Sri M.S. Hallur and in that light, when the petitioner is seeking to contend that he was not aware about the status of Sri M.S. Hallur as on the date the accounts were certified, the present action shall not be treated as a bar for the petitioner for any future tender that may be floated. If at that point, the certification of the accounts for the same period is also required to be produced, the subsequent certification made by an

authorized person shall be taken and the same be assessed along with the other documents for that purpose.

9. In view of the clarification made above, the further action if any against the petitioner pursuant to the notice dated 28.11.2014 would not arise.

With the said clarification, these petitions stand disposed of.

**Sd/-  
JUDGE**

hrp/bms