

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

WP(C).No. 1057 of 2015 (F)

PETITIONER(S):

**RASIK ALI, AGED 35 YEARS,
S/O. SHAHUL HAMEED, TC 39/1024,
NEAR ATTAKULANGARA MOSQUE, CHALAI, MANACAUD
THIRUVANANTHAPURAM.**

**BY ADVS.SRI.K.JAJU BABU (SR.)
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY PRINCIPAL SECRETARY,
HOME DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 2. SOLAR SCAM INQUIRY COMMISSION
8TH FLOOR, HOUSING BOARD BUILDING, PANAMPILLY NAGAR
ERNAKULAM, KOCHI-682 036.**

BY SENIOR GOVERNMENT PLEADER SRI.JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 13-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

WP(C).No. 1057 of 2015 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : COPY OF NOTIFICATION NO.77989/SS A2/2013/HOME DTD.28.10.2013
PUBLISHED IN SRO NO.867/2013 ISSUED BY THE 1ST RESPONDENT.**
- P2 : COPY OF THE NOTIFICATION NO.JUDL.1/SC/2014 DTD.5.3.2014 PUBLISHED IN
VOL.III OF KERALA GAZETTE DTD.19.4.2014.**
- P3 : COPY OF THE SUMMONS DTD.2.1.2015 WHICH IS SIGNED AND DTD.29.12.2014
ISSUED BY THE 2ND RESPONDENT.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 1057 of 2015

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Dated, this the 13th day of January, 2015

JUDGMENT

The petitioner herein is the defacto complainant, who parted with his money on the basis of treacherous assurances and undertakings of the parties concerned, whereby he was made to invest a sum of nearly Rs. 75 lakhs to set up a wind mill and solar panel. Admittedly, the petitioner came to know that he has been cheated, which made him to file a complaint before the police, who registered Crime No. 951 of 2013 of Thampanoor Police Station. On completion of investigation, the police filed final report under Section 173 of Cr. P.C., upon which the case has been numbered as C.C. No. 2273 of 2013, which is pending consideration before the Judicial First Class Magistrate III, Thiruvananthapuram.

2. In the meanwhile, because of various circumstances in connection with the scam involved, the first respondent herein issued Ext. P1 notification bearing No. 77989/SS/A2/2013/Home dated 05.03.2014 deciding to appoint a Commission under Section 3 of the Commission of Inquiry Act 1952. Terms of reference were also

specified and later, the Commission issued Ext. P2 notification dated 19.04.2014 as to the scope of enquiry and the procedure to be followed, along with such other relevant aspects. In the course of further proceedings, the petitioner has now been served with Ext. P3 summons dated 29.12.2014, whereby he has been required to be present before the Commission today. The grievance of the petitioner is more with regard to the alleged threat as contained in the 'last paragraph' of summons, whereby it has been mentioned that, if the petitioner fails to appear before the Commission, coercive steps for ensuring presence will be taken in accordance with law.

3. Heard Sri. Jaju Babu, the learned senior counsel appearing for the petitioner and the learned Government Pleader appearing for the respondents.

4. The learned senior counsel pointed out that the apprehension of the petitioner is mainly with regard to the coercive steps, which may be taken by the Commission in case of failure to turn up. It is also stated that the petitioner is the defacto complainant and this being the position, the complainant cannot be compelled to appear before the Commission under threat of

coercive steps. The learned counsel also points out that in the course of proceedings, several persons have come to be impleaded and almost all the accused are likely to be present in the course of the proceedings before the Commission. It is stated that, anything that may be sought to be elicited from the petitioner may stand detrimental to the rights and interests of the petitioner in the pending case forming subject matter of C.C. No. 2273 of 2013 of the Judicial First Class Magistrate III, Thiruvananthapuram. Hence the challenge.

5. After going through the pleadings and proceedings and the relevant provisions of law, particularly Section 5 (2) of the Commissions of Inquiry Act 1952, this Court finds it difficult to hold that the Commissioner has exceeded the power, jurisdiction and competence in having issued Ext. P5 summons to the petitioner. The pleadings raised by the petitioner also suggest that the petitioner does not intend to contend that the Commission does not have any power to ensure presence of such appearance under Section 5 (2) of the Act, except that it is to be sparingly used. The petitioner has been taken up a contention that the petitioner might be ordered to be present before the Commission voluntarily

and not by way of coercive means.

6. The learned counsel points out that nobody can be compelled to vouch against himself in view of the Constitutional mandate. With regard to the said submission, it is true that Constitution safeguards, particularly by sub Article 3 of the Article 20, that no person 'accused of any offence' shall be compelled to be a witness against himself. No such situation is involved herein, for the plain reason that the petitioner is never arrayed as an accused. In fact, he is the complainant in C.C. No. 2273 of 2013 of the Judicial First Class Magistrate III, Thiruvananthapuram. It is in the course of further proceedings of data collection exercise, that the petitioner is required to be present and corporation is required. By virtue of the deeming fiction under the relevant provisions of law, such a person is bound to disclose the necessary information in terms of Section 177 of IPC.

7. With regard to the apprehension expressed by the petitioner as to the possible intrusion into the case of the petitioner forming subject matter of C.C. No. 2273 of 2013 of the Judicial First Class Magistrate III, Thiruvananthapuram, the Commission itself has made it clear in Ext. P3, that no question, the answers to

which may be self incriminatory or which may adversely affect the petitioner in any manner in the pending criminal proceedings, will be put to him in the course of examination. This being the position, if any such incriminating question is put to the petitioner, it is always open for the petitioner to bring it to the notice of the Commission to safeguard the rights and interests of the petitioner with reference to C.C. No. 2273 of 2013.

In the above circumstances, this Court finds no interference does require to be made in the writ petition. Writ Petition is disposed of with the above observations.

Sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

kmd