

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN  
&  
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

WP(C).No. 1858 of 2015 (S)

PETITIONER(S):

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P L JOCOB  
PADINJAKKARA HOUSE, P.O. KUTTIKKADU 680724,  
CHALAKKUDY, THRISSUR DISTRICT

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENT(S):

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1. STATE OF KERALA  
REPRESENTED BY CHIEF SECRETARY, SECRETARIAT  
THIRUVANANTHAPURAM-695001
  2. KERALA WATER AUTHORITY  
REPRESENTED BY ITS CHAIRMAN, JALA BHAVAN  
THIRUVANANTHAPURAM-695 033
  3. THE MANAGING DIRECTOR  
KERALA WATER AUTHORITY, JALA BHAVAN  
THIRUVANANTHAPURAM-695 033
  4. ASOK KUMAR SINGH IAS,  
MANAGING DIRECTOR,  
KERALA WATER AUTHORITY JALA BHAVAN  
THIRUVANANTHAPURAM-695 033(RESIDING AT C3U  
MILLENNIUM APARTMENT, JAGATHY, THIRUVANANTHAPURAM.)
  5. M/S. BAHWAN CYBER TEK. PVT. LTD BAHWAN CYBER TEK IT PARK  
NO.148, RAJIV GANDHI SALAI (OMR), OKKIYAM  
THORAIPAKKAM, CHENNAI-600 097
  6. M/S. SRIT ENTERPRISES SOLUTION PVT. LTD  
GLOBAL HEAD QUARTERS, SRIT HOUSE, 113/11-B  
ITPL, MAIN ROAD KUNDALAHALLI , BANGALORE-560 037
  7. ACCOUNTANT GENERAL (AUDIT)  
OFFICE OF THE ACCOUNTANT GENERAL  
THIRUVANANTHAPURAM-695 001

8. THE DIRECTOR,  
CENTRAL BUREAU OF INVESTIGATION, NEW DELHI-11 0001

9. THE DIRECTOR GENERAL OF POLICE (ADMN)  
STATE OF KERALA, THIRUVANANTHAPURAM 695 001

R8 BY ADV. SRI.P.CHANDRASEKHARA PILLAI, C.B.I.  
R BY SPL. GOVERNMENT PLEADER SMT. GIRIJA GOPAL  
R2-4 BY SRI.JOSEPH JOHN, STANDING COUNSEL, KERALA WATER AUTHORITY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-01-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 1858 of 2015 (S)

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APPENDIX

PETITIONER(S)' EXHIBITS

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EXT.P1: TRUE COPY OF TH LETTER NO.T.115/12/T.S. R. DATED 1.2012 ( WITH ENGLISH TRANSLATION).

EXT.P2: TRUE COPY OF THE ORDER DATED 26.09.2005 PASSED BY THIS HONOURABLE COURT IN W.P.C. NO.11936 OF 2004

EXT.P3: TRUE COPY OF TH NEWS ITEM APPEARED IN DESHABHIMANI DAILY DATED 4.1.2015 ( WITH ENGLISH TRANSLATION).

EXT.P4: TRUE COPY OF THE REPORT DATED 28.05.2014 (WITH ENGLIH TRANSLATION)

EXT.P5: TRUE COPY OF THE G.O.(MS) NO.341/2004/WRD DATED 19.3.2004

EXT.P6: TRUE COPY OF THE G.O.(MS)NO.515/2005/WRD DATED 5.5.2005

EXT.P7: TRUE COPY OF THE LETTER DATED 29.05.2014 ISSUED BY THE 3RD RESPONDENT TO THE 5TH RESPONDENT

EXT.P8: TRUE COPY OF THE DECISION TAKEN AT THE 329TH MEETING OD THE 2ND RESPONDENT HELD ON 29.12.2009

EXT.P9: TRUE COPY OF THE LETTER NO.1199/SC 1/3024/GA(SC) DATED 31.12.2014,

EXT.P10: TRUE COPY OF TH REPORT OF THE LOK AYUKTHA DATED 28.1.2014.

EXT.P11: TRUE COPY OF THE LETTER NO.6865/EXAM DATED 4.6.2012

RESPONDENT(S)' EXHIBITS

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NIL

// TRUE COPY

P.A. TO JUDGE

**ASHOK BHUSHAN, Ag.CJ & A.M.SHAFFIQUE, J.**

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W.P.(C). No. 1858 of 2015  
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Dated this the 20<sup>th</sup> day of January, 2015

J U D G M E N T

Shaffique, J

Petitioner has approached this Court in the form of Public Interest Litigation seeking the following reliefs:

“(i) To call for the records relating to Exts.P1 to P11 and to issue a writ of mandamus commanding the 1<sup>st</sup> respondent to order enquiry and investigation in regard to the awarding of Ext.P7 contract in respect of Supply, Delivery, Installation, Commissioning, Training and Maintenance of E.R.P. System by Kerala Water Authority to the tune of Rs.19,50,14,968/- without obtaining approval from the Expert Committee and also the corruption and extra vagrant expenses involved and also the necessity for carrying out E.R.P. System for incurring such huge expenditure and to bring the corrupted officers and others under the curtain under law by charging them with criminal offences through C.B.I.

(ii) To issue any order or direction commanding the 1<sup>st</sup> respondent to initiate action against the 3<sup>rd</sup> respondent and also the Board members of the 2<sup>nd</sup> respondent for violating Ext.P5 order passed by the Government and issuing acceptance letter in the matter of awarding of

works involving more than Rupees 19 Crores without obtaining approval from the Expert Committee and also to place the 3<sup>rd</sup> respondent under suspension or to remove or transfer him from the post of Managing Director for the purpose of conducting fair enquiry, investigation etc.,

(iii) To issue a writ of mandamus commanding the 7<sup>th</sup> respondent to finalise the audit as revealed from Ext.P4 report and to submit the same for immediate action for the purpose of recovering the loss caused to the Government and also to bring the offenders under the clutches of law."

2. It is *inter alia* alleged that in the matter relating to award of contracts by Kerala Water Authority, large scale corruption is being committed by the officials and contractors. Reference is made to award of work relating to Ext.P7 contract. The main contention urged is that Ext.P7 work has been awarded in favour of the fifth respondent on 29.5.2014, without complying with the procedure in terms of Ext.P5 and P6. Ext.P7 indicates acceptance of offer given by the fifth respondent to supply, delivery, installation, commissioning, training and maintenance of ERP system for Kerala Water Authority for an amount of Rs.19,50,14,968/-. Ext.P5 is the Government Order dated 19.3.2004 with reference to the functions of Empowered

Committee in the matter relating to JBIC assisted by the Kerala Water Supply Project which commenced on 1.9.2003. The purport of the above Government Order indicates that there has been considerable delay in the appointment of the consultant, which is mandatory and the project had to be completed by December, 2003. In order to co-ordinate the various activities of JBIC, an Empowered Committee has been constituted. The functions of the committee indicates review and approval of recommendations regarding acceptance of prequalification tenders, technical and financial bids of contractors and related matters referred to Government by the Kerala Water Authority. Similarly, Ext.P6 relates to a similar order where the Empowered Committee has been constituted as per order dated 5.5.2005 taking into consideration the delay in commencing the project. The earlier committee has been reconstituted to ensure transparency in the implementation of the project and also for effective monitoring and co-ordination at a higher level in Government.

3. Apparently, the awardee of the work as evident from Ext.P7 is the Chief Engineer (JICA Project). Once the open tender

has been invited and offer has been accepted by the awardee of the work, it is for the appropriate authority to consider whether the tender had been invited in the proper manner and work has been awarded after complying all the procedures. There is no mandate that all the tenders have to be invited and approved by the Empowered Committee. Exts.P5 and P6 relate to specific items and it not ensured as to whether the said Empowered Committee is still in existence.

4. Whatever that may be, Ext.P7 has been awarded after an open tender and it is not in dispute that the work as well as the expenditure relating to it was approved only after complying with the normal procedure. If any deficiency is pointed out, then alone it is a question to be investigated. As matters stand now, the request is made for CBI investigation into the various expenditure in relation to Ext.P7 contract. We do not think that the facts narrated calls for any specific orders in a public interest litigation. The contract covered by Ext.P7 is of commercial nature, for which *prima facie*, there is no material to indicate that CBI investigation should be conducted. That apart all these matters are subject to audit by the competent agencies. Merely for the reason that

Exts. P5 and P6 orders have not been complied with, cannot be sufficient ground for this court to arrive at a conclusion, that large scale corruption has occurred in the matter relating to Ext.P7 contract and order an investigation by the CBI. Under such circumstances, we do not think it fit to interfere with the contract at this stage.

With this observation, the writ petition is dismissed.

Sd/-  
**ASHOK BHUSHAN,  
ACTING CHIEF JUSTICE**

Sd/-  
**A.M.SHAFFIQUE,  
JUDGE.**

sou.