

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

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

WP(C).NO. 2495 OF 2015 (S)

PETITIONER(S):

A.V.THAMARAKSHAN AGED 67 YEARS
S/O. V.VELU, 'ANASWARA', SACARIYA WARD
ALAPPUZHA.

BY ADVS.SRI.A.X.VARGHESE
SRI.A.V.JOJO

RESPONDENT(S):

1. CENTRAL BUREAU OF INVESTIGATION
REPRESENTED BY ITS DIRECTOR, NEW DELHI-110 011.

2. STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM-695 001.

3. SRI.K.M.MANI
MINISTER OF FINANCE, GOVERNMENT OF KERALA, SECRETARIAT
THIRUVANANTHAPURAM-695 001.

4. BIJU RAMESH
WORKING PRESIDENT OF BAR OWNERS
ASSOCIATION RAJADHANI BUILDING
EAST FORT, THIRUVANANTHAPURAM-695 001.

5. THE DIRECTOR
VIGILANCE & ANTI CORRUPTION BUREAU
THIRUVANANTHAPURAM-695 001.

BY ADVOCATE GENERAL SHRI K.P.DANDAPANI R2
BY SRI.P.CHANDRASEKHARA PILLAI, C.B.I. R1

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXHIBIT P1 COPY OF THE REPORT PUBLISHED IN THE TIMES
OF INDIA DTD.1.11.2014.
- EXHIBIT P2 COPY OF THE REPORT PUBLISHED IN TIMES OF
INDIA DTD.4.11.2014.
- EXHIBIT P3 COPY OF THE PAPER REPORT COMES IN TIMES OF
INDIA DTD.20.1.2015.
- EXHIBIT P4 COPY OF THE PAPER REPORTS COMES IN TIMES OF
INDIA DTD.21.1.2015.
- EXHIBIT P5 COPY OF THE PAPER REPORT COMES IN TIMES OF
INDIA DTD.22.1.2015.

RESPONDENT(S) ' EXHIBITS:

NIL

ASHOK BHUSHAN, Ag. C.J.

And

A.M. SHAFFIQUE, J.

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W.P(C) No.2495 of 2015

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Dated this the 28th day of January, 2015

J U D G M E N T

Ashok Bhushan, Ag. C.J.

Petitioner, General Secretary of Revolutionary Socialist Party of Kerala (Bolshevik) (RSP) and a former Member of Legislative Assembly has filed this Writ Petition as a public interest litigation praying for the following relief.

"Issue a Writ of Mandamus or any other writ, order or direction, directing the 1st respondent to investigate into the alleged corruption in public life committed by the 3rd respondent in a fair and impartial manner and prosecute the 3rd respondent for having committed the offences under Sections 7 and 13 of the Prevention of Corruption Act.

Petitioner's case in the Writ Petition is that respondent No.4, Biju Ramesh, Working President of Bar Owners

Association had made startling revelation on 31.10.2014 before the media that members of the Bar Owners Association has paid an amount of Rs.1 crore in two installments of Rs.15 lakhs and Rs.85 lakhs to the 3rd respondent, Finance and Law Minister of the State. It was further alleged that bribe was paid for not reopening 418 bars which were closed on 31.03.2014 and allow only 312 bars to function. Biju Ramesh further made allegation that when he met the 3rd respondent again, a bribe of Rs.5 crores was demanded. It is further pleaded in the Writ Petition that consequent to the pressure exerted by the Opposition Leader, the Home Minister has said that the Government would consider a detail probe only if the Vigilance found a need for it. A quick verification report was ordered. It is stated that the said revelations were published in the media. News item which appeared in Times of India on 01.11.2014 is enclosed as Ext.P1.

Newspaper report dated 20.01.2015 published in the Times of India has also been annexed stating that 4th respondent had handed over audio tapes of different bar hotel owners stating that they handed over money to the 3rd respondent. Another statement in the Writ Petition is that ADGP Shri Jacob Thomas from the Vigilance and Anti Corruption Bureau (for short, "the VACB") is to be shifted following his promotion as DGP which has impact on the investigation. Petitioner's case further is that investigation by the 5th respondent is going at a snail pace in the case popularly known as bar bribery case. It is submitted that there is attempt by the Government to shield the 3rd respondent and in view of the aforesaid things, a direction may be issued to Central Bureau of Investigation (for short, "the CBI") to investigate into the alleged corruption in public life committed by the 3rd respondent in a fair and impartial manner and the 3rd respondent be prosecuted for the

offence committed under Sections 7 and 13 of the Prevention of Corruption Act.

2. Shri A.X. Varghese, learned counsel for the petitioner very effectively and passionately submitted before the Court that for allegations made against the Finance Minister of the State, investigation be directed to be made by the CBI which alone is competent to unearth the corruption at the hands of Ministers. It is submitted that the 3rd respondent being the Finance and Law Minister there is no hope that any fair investigation shall be carried out. He further submitted that the investigation team has not yet conducted raid at the house of the 3rd respondent to seize the money from the 3rd respondent. Investigation by the Vigilance Department is going on at a snail pace which does not inspire confidence. It is submitted that there is apprehension in the general public that investigation of the case would be delayed since no one has courage to

take action against Ministers since the 5th respondent who is under the control of the Government shall not take any action against Ministers. It is submitted that the Times of India has reported on 21.01.2015 that Biju Ramesh has released further recorded conversation between the prominent bar owners implicating the Finance Minister. He submitted that in the circumstances of the present case investigation be handed over to the CBI. Learned counsel for the petitioner in support of his submissions placed reliance on the decisions in **Niyamavedi v. Raman Srivasthava** (1995 (1) KLT 206), **Vishwanath Chaturvedi (3) v. Union of India** (2007 (4) SCC 380) and **Akilesh Yadav v. Vishwanath Chaturvedi and Others** (2013 (2) SCC 1).

3. Refuting the submissions of the learned counsel for the petitioner, learned Advocate General appearing for the State submitted that the VACB has

already registered FIR on 10.12.2014 against the 3rd respondent after receiving quick verification/preliminary enquiry report from the VACB. He further submitted that investigation on the basis of the FIR registered on 10.12.2014 is going on and 10 witnesses have already been examined. He further submitted that Biju Ramesh is making fresh revelations every day which is also a cause for delaying the investigation. It is submitted that Biju Ramesh handed over audio tape on Wednesday (21st January, 2015) to the Vigilance Department which has to be sent to the Forensic Science Laboratory. He denied that there is any move to change the Investigating Officer. He submitted that with regard to the media reports regarding shifting of Jacob Thomas, he is recommended for promotion as DGP. He submitted that Investigating Officer of the Vigilance Department is not being changed and promotion and consequent shifting of ADGP is in normal

routine which in no manner shall affect the investigation.

4. We have heard learned counsel for the parties and perused records.

5. From the submissions made by the learned counsel for the parties it is clear that FIR has already been registered against the 3rd respondent by the VACB of the State and the Superintendent of Police, VACB is investigating the offence under the Prevention of Corruption Act against the 3rd respondent. First Information Report has been registered on 10.12.2014 in which the investigation is still going on as has been submitted by the learned counsel for the parties.

6. There is no dispute that this Court in exercise of the power under Article 226 of the Constitution of India has not only ample jurisdiction to direct for investigation by the CBI without there being any consent of the State Government. But, before issuing any such

direction this Court has to take into consideration the caution given by the Constitution Bench of the Supreme Court in **State of West Bengal and Others v. Committee for Protection of Democratic Rights West Bengal and Others** ([2010] 3 SCC 571). The Constitution Bench in the aforesaid case held that in exercise of jurisdiction under Article 226 of the Constitution a direction can be issued to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State which will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. It was further held that being protectors of civil liberties of the citizens, the Apex Court and the High Courts shall have not only the power and jurisdiction but also an obligation to protect the fundamental rights guaranteed by Part III in general and under Article 21 of the

Constitution of India in particular, zealously and vigilantly. The Apex Court however sounded a note of caution while exercising constitutional powers in paragraph 70 in the following words:

“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly

investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations”.

7. Learned Advocate General submitted that a Writ Petition (Criminal) was filed seeking direction to monitor investigation of the above case by the High Court under Article 226/227 of the Constitution in which Writ Petition this Court by an order passed on 22.01.2015 has declined to issue any direction to monitor any such investigation and asked the counsel to address on the question of law. It is useful to refer to the order passed in W.P(Cr.) No.2272 of 2015 which is to the following effect:

"It is submitted that the very preliminary stage. The learned counsel for the petitioner will address the court on the question of law involved in this matter, regarding the scope and extent of the extraordinary powers of this Court under Article 227 of the Constitution of India to intrude into the process of investigation and monitor it. Such extreme extra ordinary measures cannot be now resorted to at this preliminary stage. It appears that the petitioner seeks relief solely on the

ground that the person against whom investigation proceeds is a Minister. That by itself cannot be a ground to monitoring the investigation if at all possible. The petitioner will have to wait and urge specific ground for such a measure, if possible, or to the extent possible, as and when he gets grounds for such a measure, or when he finds something wrong with investigation, or if he feels that investigation proceeds on the wrong track. Now I find no reason for interference especially when the matter requires to be heard in detail on the question of law whether this Court can interfere with the investigation process in exercise of the extraordinary powers under Article 227 of the Constitution of India”.

8. The allegations of offence committed by the 3rd respondent are allegations against a Minister of the State. The investigating agency has to be more cautious and careful while investigating on corruption of persons occupying high office in Government because it is the duty of the law enforcement agency to unearth the corruption in the high office and prove their credibility of carrying out investigation without any fear or favour. Their duty is more onerous when they are investigating allegations against a sitting Minister of the

State Government.

9. Now we come to the pleadings in the Writ Petition and the grounds pleaded by the petitioner for direction to transfer investigation of the case to the CBI. Following are the facts and grounds pleaded in the Writ Petition for praying the reliefs quoted already: (i) Investigation is proceeding in snail pace by the 5th respondent. (ii) Investigation with regard to corruption did not proceed in the correct line and attempt is to shield and cover the 3rd respondent who is at the helm of the affairs of the State. (iii) On 21.01.2015 the 4th respondent handed over audio tapes containing revelations of various bar hotel owners that they handed over money to the 3rd respondent but due to severe pressure on the probing officers there is no possibility of thread bare investigation in the bar bribery case. (iv) The State Government also decided to shift ADGP Jacob Thomas from the VACB which would definitely affect

investigation of the bar bribery case.

10. Now coming to the first ground that the investigation is going at snail pace, suffice is to note that FIR was registered only on 10.12.2014 and according to the petitioner himself the 4th respondent is making more revelations and last of such revelation has been made on 21.01.2015, by releasing recorded conversation between the prominent bar hotel owners. The said audio tapes were handed over to the Investigating Officer on 21.01.2015. Learned Advocate General has stated that the investigation is proceeding and 10 witnesses were already examined and the audio tapes handed over 21.01.2015 to the VACB has to be sent to the Forensic Science Laboratory. Learned Advocate General submitted that in view of the revelations being made by the 4th respondent every day investigation has to be properly carried out taking into consideration the said revelations also. In view of the

above facts, we are of the view that it is too early to observe that the investigation is going at a snail pace. We do not find any inordinate delay in the investigation as on date so as to direct transfer of the investigation from the VACB to the CBI as on date.

11. Now coming to the second ground alleged that the investigation is not proceeding in the correct line and the attempt is to cover and shield the 3rd respondent. Learned counsel for the petitioner in this context emphasised that no raid has been conducted in the house of the 3rd respondent to recover money. It is for the investigating agency who has the primary responsibility and duty to carry on investigation to take all such steps necessary for conducting fair, impartial and substantial investigation. To condemn the investigation at this stage on the ground that the investigating agency has not conducted any raid in the house of the 3rd respondent is premature when

investigation is still going on and has not been concluded. Although, it has been pleaded in the Writ Petition that attempt is to shield and cover the 3rd respondent, no circumstances and details or materials have been brought on record to enable the court to come to the conclusion that investigation is being interfered by the State Government with intend to shield and cover the 3rd respondent. FIR has been launched by the VACB after conducting preliminary enquiry and investigation is in progress. With regard to fresh revelations of the 4th respondent in the shape of new audio tapes released on 21.01.2015 the investigating agency has to look into the said material and take appropriate steps. Fresh evidence being coming on 21.01.2015 which as submitted by the learned Advocate General has to be sent to the Forensic Science Laboratory, we are of the view that investigation cannot be said to be delayed on being interfered with

by the State.

12. Now coming to the 4th ground alleged in the Writ Petition that ADGP Jacob Thomas is going to be promoted and shifted from the VACB which would affect the investigation, reason for the proposed shifting has been stated by the learned Advocate General that he has already been recommended for promotion as DGP. The learned Advocate General has categorically stated that investigation officer who is the Superintendent of Police, VACB is not being shifted. On the above facts, we are not persuaded to accept the submission that there is any deliberate attempt on the part of the State Government to thwart the investigation.

13. Now we may look into the judgments relied on by the learned counsel for the petitioner. First case is **Niyamavedi v. Raman Srivastava** (supra). A Division Bench of this Court in the said case has

observed that newspapers are purveyors of news and views having a bearing on the public administration. On the basis of such news items public spirited person can certainly approach the court to have the entire matter examined. The Division Bench However, in the same case in paragraph 8 made the following observations.

"8. It is common case that the case that is being investigated by the Central Bureau of Investigation is in respect of a matter involving the security of the country at large and the issues in the case are highly sensitive and delicate (vide affidavit filed by Surinder Paul, Deputy Superintendent of Police in support of C.M.P.9/1995). Petitioner was advancing the case based on reports published in two newspapers having wide circulation in the State. They are the Indian Express and Mathrubhoomi. The press has now assumed the role of the public educator. The purpose of the press is to advance the public interest by publishing facts and opinions. Such publication of fact is highly essential for educating the public. Newspapers are purveyors of news and views having a bearing on the public administration. Such news items coming in the papers cannot be brushed aside as totally baseless and unacceptable. They must be regarded as having factual foundation. When the

administration is found to be acting against these publications, a public spirited individual may feel agitated. If the incident relates to a situation which affects the very security of the nation, then the feeling of the citizen will be more intense. In such a situation he, according to us, can certainly approach the Court to have the entire matter examined. Such an approach is not to be thwarted at the threshold on the ground that he is a meddlesome interloper or by describing him as a busybody. If such a move is made it will not be proper on the part of the Court to take any action on the basis of the reports published in the newspapers. But, that can be the basis for examining the entire details and facts relating to the case. This Court has in many such situations initiated proceedings based on news items published in newspapers. The position of a free press in a democracy has been recognised by the Supreme Court in Indian Express Newspapers (Bombay) P. Ltd. v. Union of India, AIR 1986 SC 515, in the following terms:

"The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to governments and other authorities. The authors of the articles which are published in newspapers have to be critical of the actions of the government in order to expose its weaknesses. Such articles tend to become an irritant or even a threat to power. Governments naturally take recourse to suppress newspapers publishing such articles in different ways".

Consequently it was held that it is the primary duty of all national Courts to uphold the freedom of the press. Their Lordships went on to state that so long as the Supreme

Court sits, newspaper men need not have the fear of their freedom being curtailed by unconstitutional means. Thus the news items published in responsible newspapers can be a ground for a public spirited person to move constitutional Courts requesting the Court to examine the correctness or otherwise of the facts brought out in the press. Viewed in that light, we are of the opinion that the petitioner is having the locus standi to approach this Court by filing this Original Petition primarily relying on the news items published in the newspapers. Consequently this Court is bound to examine the records of the investigating machinery to ascertain whether there is any iota of truth in the news items published by the media. This exercise is to be resorted to by this Court in exercise of the extra ordinary jurisdiction under Art.226 of the Constitution to get at the truth. This is more so in a situation where the security of the nation itself is at stake. Therefore we are of the firm view that the records now produced before Court by the various authorities under the Central Government are to be examined by us".

14. Thus merely on the basis of newspaper report the court shall not act unless there are other materials to support the pleadings and allegations. In the present case we have not taken any such view that the the Writ Petition is not maintainable as a public interest

litigation. In the aforesaid case, the Division Bench further held that material collected by the investigating machinery and the Intelligence Bureau can be perused by the court to see whether investigation proceeds fairly and impartially. The observations were made in paragraph 11 which is quoted below:

"11. As stated earlier, the materials collected by the investigating machinery and the Intelligence Bureau can be perused by this Court to see whether the investigation proceeds fairly and impartially. This is more so when it is seen that the Central Bureau of Investigation has filed charges against some of the arrested persons only for having been in possession of property disproportionate to his known source of income. Till date the Central Bureau of Investigation has not come forward with any charge against the accused for any offence, which has, as alleged by all, the effect of affecting the security of the nation".

In the present case the investigating agency has not yet concluded the investigation nor has submitted any report so as to enable the court to examine the investigation process to form any opinion.

15. Judgment of the Supreme Court in **Vishwanatha Chaturvedi (3) v. Union of India** (Supra) was a case where the Writ Petition as a Public Interest Litigation was filed in the Apex Court under Article 32 of the Constitution seeking a direction for enquiry by the CBI regarding amassing of disproportionate assets by the Chief Minister of the State of Uttar Pradesh and his family members. The court in the said case has issued notice and called upon the respondents to file details of their assets including the income tax and wealth tax assessments and after perusing all the records was satisfied that prima facie allegations of amassing the disproportionate assets were made out and the court directed for CBI enquiry. In the said case no FIR was registered nor investigation was going on by the VACB or any other investigating agency. The said case was on its own facts and clearly distinguishable.

16. The judgment of the Supreme Court in **Akhilesh Yadav v. Vishwanath Chaturvedi and Others** (supra) is a case where the respondent to the Writ Petition filed a review petition to review the earlier judgment of the Apex Court dated 01.03.2007 whereby direction was issued for conducting CBI enquiry (**Vishwanath Chaturvedi (3) v. Union of India** (2007 (4) SCC 380 (supra)). The court disposed of the review petition maintaining the direction to conduct CBI enquiry with slight modification. Referring to the judgment of the Apex Court in **State of West Bengal and Others v. Committee for Protection of Democratic Rights West Bengal and Others** (supra), following was laid down by the Apex Court in paragraphs 33 and 37 which are to the following effect:

"33. A note of caution was also given by the Constitution Bench, which, in fact, finds place in all the decisions relating to this issue, namely, that the power which is vested in the superior Courts should be exercised sparingly, cautiously and in exceptional situations where

it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing fundamental rights. The said note of caution is an echo of the observations made by this Court in Supreme Court Bar Association v. Union of India and Another [1998 KHC 260 : 1998 (4) SCC 409 : 1998 (1) KLT SN 85 : JT 1988 (3) SC 184], that such an inquiry by the CBI could be justified in certain circumstances to prevent any obstruction to the stream of justice.

37. The judgment under review does not, in our view, suffer from any error apparent on the face of the record, except for the directions given in the case of Smt. Dimple Yadav. There is another error which we ourselves are inclined to correct. While disposing of the writ petition and directing the CBI to inquire into the alleged acquisition of wealth by the Respondent Nos. 2 to 5, the CBI was directed to submit a report to the Union of India and on receipt of such report, the Union of India was given the liberty to take further steps depending upon the outcome of the preliminary inquiry into the assets of the said respondents. Since, the CBI is an independent body and is under no obligation to report to the Union of India in regard to investigations undertaken by it, the direction to submit a report of the inquiry to the Union of India and the liberty given to the Union of India to take further steps on such report is not contemplated in the scheme of the Delhi Special Police Establishment Act, 1946. It is for

the CBI to decide what steps it wishes to take on the basis of the inquiry conducted. We, therefore, modify the order dated 1st March, 2007, and direct that the directions given to the CBI to submit a report of its inquiry to the Union of India and the liberty given to the Union of India to take further steps on such report, be deleted from the order”.

Thus in the above case the Apex Court was satisfied that the judgment under review did not suffer from any error apparent on the face of the record except for the direction given in the case of Smt.Dimple Yadav. As observed above the above case was decided on its own facts and does not apply to the facts of the present case.

17. Investigation being still in progress as noted above and there being no material to come to the conclusion that the VACB is not carrying on free and impartial investigation due to any extraneous reason and report of the investigating agency is yet to be filed, we are of the view that at this stage no grounds have been made out to issue any direction to transfer the investigation of the case to the CBI as prayed for in the

Writ Petition. We cannot also draw any conclusion that the investigation is unreasonably delayed. Thus as on date prayer made in the Writ Petition cannot be granted.

With the above observation the Writ Petition is closed.

ASHOK BHUSHAN, Ag. C.J.

A.M. SHAFFIQUE, JUDGE.

VSV