

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WP(C).No. 5986 of 2011 (S)

PETITIONER :

**GOPINATH K.V. ALIAS NARUKARA GOPI,
S/O.K.GOVINDAPANICKER, 'SAIGANGA',
NARUKARA P.O., MANJERI, MALAPPURAM DISTRICT.**

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENT(S):

- 1. THE COMMITTEE FOR APPOINTING STATE
INFORMATION OFFICER, REPRESENTED BY ITS CHAIRPERSON,
(SRI.OOMMEN CHANDY, CHIEF MINISTER OF KERALA),
SECRETARIAT, THIRUVANANTHAPURAM - 695 001. *(DELETED)**

***THE NAME OF THE CHIEF MINISTER OCCURING IN THE CAUSE TITLE OF
RESPONDENT NO.1 IS DELETED VIDE ORDER DATED 11/11/11 IN WP(C)**

- 2. STATE OF KERALA, REPRESENTED BY ITS
CHIEF SECETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM- 695 001.**
- 3. SIBY MATHEWS, CHIEF INFORMATION COMMISSIONER,
OFFICE OF THE CHIEF INFORMATION OFFICER,
THIRUVANANTHAPURAM - 690548.**

**R1 & R2 BY SR GOVERNMENT PLEADER SRI.VIJU ABRAHAM
R3 BY ADV. SRI.V.V.NANDAGOPAL NAMBIAR
SMT.PREETHI KESAVAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE PUBLICATION ISSUED BY THE DIVINE CENTRE, MURINGOOR.**
- P1(A) COPY OF ENGLISH TRANSLATION OF EXT.P1**
- P2 COPY OF THE FORWARDING ENDORSEMENT BY THE SUPERINTENDENT OF POLICE, VIGILANCE, CENTRAL RANGE, KOCHI**
- P3 COPY OF THE COMMUNICATION DATED 16/2/2008 ISSUED BY THE DIRECTOR OF VIGILANCE & ANTI CORRUPTION BUREAU.**
- P4 COPY OF THE COMMUNICATION DATED 13/2/2008 ISSUED BY SRI.MATHEW JOSE, SUPERINTENDENT OF POLICE TO THE DIRECTOR OF VIGILANCE AND ANTI CORRUPTION BUREAU, TRIVANDRUM**
- P5 COPY OF THE COMMUNICATION FORWARDED BY THE 3RD RESPONDENT TO THE DEPUTY SUPERINTENDENT OF POLICE, PALAKKAD DATED 30/4/2008**
- P5(A) COPY OF THE ENGLISH TRANSLATION OF EXT.P5**
- P6 COPY OF THE COMMUNICATION DATED 05/2008 ISSUED BY THE DIRECTOR TO THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT, VIGILANCE DEPARTMENT**
- P7 COPY OF THE FORWARDING ENDORSEMENT ISSUED BY THE SUPERINTENDENT OF POLICE DATED 17/3/2008**
- P8 COPY OF THE NOTIFICATION DATED 21/2/2011 GO(MS) NO.54/2011/GAD**
- P9 COPY OF THE CBI REPORT OF THE ROLE OF CERTAIN OFFICIALS OF KERALA POLICE IN THE INVESTIGATION OF ISRO ESPIONAGE CASE.**
- P10 COPY OF THE ORDER DATED 14/3/2011 IN CASE NO.235/11/98-99 ISSUED BY THE NATIONAL HUMAN RIGHTS COMMISSION, NEW DELHI**
- P11 COPY OF THE LETTER DATED 17/2/2011 SENT BY THE COMMANDED GENERAL, FIRE AND RESCUE SERVICE, THIRUVANANTHAPURAM TO THE ADDITIONAL CHIEF SECRETARY, HOME (F) DEPARTMENT, GOVERNMENT OF KERALA**
- P11(A) COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P11**
- P12 COPY OF THE LETTER DATED 26/2/2011 SENT BY THE COMMANDED GENERAL, FIRE AND RESCUE SERVICE, THIRUVANANTHAPURAM TO THE ADDITIONAL CHIEF SECRETARY, HOME (F) DEPARTMENT, GOVERNMENT OF KERALA.**

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- P12(A) COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P12
- P13 COPY OF THE REPORT OF SRI.T.K.JYOTHISH KUMAR DATED 24/2/2011 SUBMITTED TO THE TECHNICAL DIRECTOR, FIRE & RESCUE, THIRUVANANTHAPURAM
- P13(A) COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P13
- P14 COPY OF THE REPORT OF SRI.T.K.JYOTHISH KUMAR DATED 24/2/2011 SUBMITTED TO THE TECHNICAL DIRECTOR, FIRE & RESCUE, THIRUVANANTHAPURAM.
- P14(A) COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P14
- P15 COPY OF THE PLAINT IN O.S.NO.918/1998 SUBMITTED BY SRI.K.CHANDRASEKHAR BEFORE THE COURT OF THE CITY CIVIL JUDGE AT BANGALORE
- P16 COPY OF THE PLAINT IN O.S.NO.1986/1998 FILED BY SRI.SUDHIR KUMAR SHARMA BEFORE THE COURT OF THE CITY JUDGE AT BANGALORE
- P17 COPY OF THE PLAINT IN O.S.NO.370/2003 FILED BY SRI.S.NAMBI NARAYANAN BEFORE THE SUB COURT, THIRUVANANTHAPURAM.
- P18(A) COPY OF THE RELEVANT PORTION OF THE PUBLICATION ISSUED BY THE DIVINE CENTRE DATED SEPTEMBER 2001 WITH ENGLISH TRANSLATION
- P18(B) COPY OF THE RELEVANT PORTION OF THE PUBLICATION ISSUED BY THE DIVINE CENTRE DATED APRIL 2003 WITH ENGLISH TRANSLATION
- P18(C) COPY OF THE RELEVANT PORTION OF THE PUBLICATION ISSUED BY THE DIVINE CENTRE DATED SEPTEMBER 2003 WITH ENGLISH TRANSLATION
- P18(D) COPY OF THE RELEVANT PORTION OF THE PUBLICATION ISSUED BY THE DIVINE CENTRE DATED FEBRUARY 2004 WITH ENGLISH TRANSLATION
- P18(E) COPY OF THE RELEVANT PORTION OF THE PUBLICATION ISSUED BY THE DIVINE CENTRE DATED APRIL 2004 WITH ENGLISH TRANSLATION
- P18(F) COPY OF THE RELEVANT PORTION OF THE PUBLICATION ISSUED BY THE DIVINE CENTRE DATED JUNE, 2004 WITH ENGLISH TRANSLATION
- P19 COPY OF THE FINAL REPORT SUBMITTED BY THE DEPUTY SUPERINTENDENT OF POLICE, V & ACB BEFORE THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THRISSUR
- P20 COPY OF THE CHAPTER VI OF THE VIGILANCE ENQUIRY

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- P20(A) COPY OF THE ORDER DATED 12/5/1992
- P21 COPY OF THE SCRUTINY NOTE FURNISHED BY THE DEPUTY INSPECTOR GENERAL ON 01/2/2008
- P22 COPY OF THE JUDGMENT DATED 7/9/2012 IN W.A.NO.2128 OF 2006 & CONNECTED CASES.

RESPONDENT'S EXHIBITS:

- R3(A) COPY OF THE GAZETTE NOTIFICATION NO.SRO 135/2011 DATED 21/02/2011
- R3(B) COPY OF THE ORDER DATED 26/05/2011 IN CMP 41/2011 OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THRISSUR
- R3(C) COPY OF THE ORDER G.O(RT) NO.1923/2011/HOME DATED 29/06/2011
- R3(D) COPY OF THE CHALAN DATED 26/02/2011 ISSUED FROM SUB TREASURY, VELLAYAMBALAM, THIRUVANANTHAPURAM
- R3(E) COPY OF THE ORDER DATED 17/09/2011 IN CRL.M.P.NO.1483/2011 OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM.

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P.S.TO JUDGE

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ASHOK BHUSHAN, CJ

&

A.M. SHAFFIQUE, J.

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W.P (C) No. 5986 of 2011

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Dated this, the 14th day of July, 2015

J U D G M E N T

Shaffique, J

This writ petition is filed in the form of a Public Interest Litigation seeking for a direction to respondents 1 and 2 to withdraw the recommendation issued by them to the Governor of the State as State Chief Information Commissioner. During the pendency of the writ petition, 3rd respondent was appointed as State Chief Information Commissioner as per SRO No.135/2011 dated 21/2/2011. Hence, the petitioner amended the writ petition seeking to quash Ext.P8, the said Government Order. He also seeks for a direction to respondents 1 and 2 to remove the 3rd respondent from the post of State Information Commissioner.

2. The main contention urged by the petitioner is that the 3rd respondent was not eligible and competent to be appointed as a Chief Information Officer in terms of Section 15 (5) of the Right to Information Act, 2005 (hereinafter referred to as 'the Act').

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Petitioner narrates certain incidents by which an attempt has been made to indicate that the 3rd respondent was not a person of eminence, which is required in terms of Section 15(5) of the Act to be appointed as Information Commissioner of the State. It is stated that the 3rd respondent, who was an IPS cadre officer was in charge of various agencies in the State of Kerala and had involved in investigation of several crimes. It is pointed out that while being an officer of the State, he was also an advisor of a magazine published in the name and style Divine Voice. Further, it is alleged that materials are available to indicate that he had unnecessarily involved in helping the accused in a crime related to corruption in the Malabar Cements. Petitioner also points out various other circumstances to indicate that the 3rd respondent had involved in certain matters which should not have been done by him as an investigating officer of ISRO Espionage case.

3. Counter affidavit has been filed by the 3rd respondent as well as respondents 1 and 2 objecting to the contentions urged on behalf of the petitioner and *inter alia* contending that the appointment of the 3rd respondent had been made on the basis of decision taken by the Committee constituted under Section 15(3) of the Act, which has been accepted by the Governor and

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therefore, such appointment does not call for judicial review in this proceedings. Further, it is contended that the allegation raised against the 3rd respondent was totally unsubstantiated and he was a person eligible to be appointed as the State Chief Information Commissioner. It is also pointed out that the petitioner had not narrated any incident by which it could be stated that the 3rd respondent was not qualified in terms of Section 15(5) of the Act and there is no disqualification in terms of Section 15(6) of the Act.

4. Heard the learned counsel for the petitioner Sri.K.M.Sathyanatha Menon, learned senior Government Pleader Sri.Viju Abraham appearing for respondents 1 and 2 and Sri.V.V.Nandagopal Nambiar, learned counsel appearing on behalf of the 3rd respondent.

5. The short facts involved in the case is whether this Court should exercise the power of judicial review to set aside Ext.P8, an order passed by the Governor appointing the 3rd respondent as State Chief Information Commissioner.

6. The appointment of State Information Commissioner is done in terms of Section 15 of the Act. Sections 15(3) and 15(5) are relevant, which are extracted below:

“15(3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of -

(i) the Chief Minister, who shall be the chairperson of the committee.

(ii) the leader of opposition in the Legislative Assembly; and

(iii) a Cabinet Minister to be nominated by the Chief Minister.

Explanation: *For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognised as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of the Opposition”.*

“(5) State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance”.

7. It is rather clear that a High Power Committee constituted under the statutory provisions under Section 15(3) is entitled to verify the credentials of an applicant or a person to be appointed as the State Chief Information Commissioner. Once the Committee has taken a decision and made a recommendation to

the Governor, in the absence of sufficient materials to indicate that a person appointed by the Governor is disqualified by virtue of the statutory provision, it may not be possible for this Court to enter into a finding as an appellate authority under what circumstances the said person has been appointed in terms of Section 15(3) of the Act.

8. Although learned counsel for the petitioner has narrated certain incidents, which, according to him, points to the incapacity of the 3rd respondent from being appointed as the State Information Commissioner, we do not think that such materials warrant consideration in the form of a judicial review in order to find out as to whether he is a person qualified in terms of Section 15(5) of the Act. No materials are available to indicate that the Government or any other authority has taken any disciplinary action or other steps to indicate that the 3rd respondent is a person who is not of good character or is not an eminent person. Apparently, he was a person in IPS cadre having large number of years' service as a Police Officer. He had undertaken several investigations in the State. There had been no instance where this Court, any authority or the Government had taken any disciplinary action against him or had given any

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strictures against the manner in which he has functioned as a police officer. Under such circumstances, when the Committee constituted under Section 15(3) has recommended the name of the 3rd respondent, we do not think that materials now available on record would justify interference in the form of a judicial review of this Court.

9. The reasons stated by the petitioner ventilates his own opinion on certain set of facts which cannot have any bearing on the decision making process made by the Committee while selecting the 3rd respondent. Petitioner has also not brought to the notice of this Court any statutory violation while appointing the 3rd respondent in the said capacity. In such circumstances, we do not think that this Court will be justified in interfering with Ext.P8.

Writ petition is hence dismissed.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp

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PS to Judge