

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WP(C).No. 6862 of 2015 (G)

PETITIONER(S):

**BENNY MATHEW,
THONAKKARA HOUSE, NO. 70-A, MOSQUE LANE
KESAVADASAPURAM, PATTOM PALACE P.O.
THIRUVANANTHAPURAM - 695 004.**

**BY ADVS.SMT.SUMATHY DANDAPANI (SR.)
SRI.MILLU DANDAPANI
SRI.PREMCHAND R.NAIR**

RESPONDENT(S)/RESPONDENTS:

**1. THE KERALA TOURISM DEVELOPMENT CORPORATION LTD.
THROUGH ITS CHAIRMAN, CORPORATE OFFICE MASCOT SQUARE
P.B.NO. 5424, THIRUVANANTHAPURAM - 695 033.**

**2. THE MANAGING DIRECTOR
THE KERALA TOURISM DEVELOPMENT CORPORATION LTD
CORPORATE OFFICE MASCOT SQUARE, P.B.NO. 5424
THIRUVANANTHAPURAM - 695 033.**

**R1,R 2 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL, SC, KTDC
R2 BY ADV. SRI.S.SREEKUMAR (SR.)
R2 BY ADV. SRI.P.MARTIN JOSE
R2 BY ADV. SRI.P.PRIJITH
R2 BY ADV. SRI.THOMAS P.KURUVILLA**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE PROCEEDINGS, ORDER NO. KTDC/PA6/SFC/2012 DATED 20/06/2012 ISSUED BY THE 1ST RESPONDENT.**
- EXT.P2: TRUE COPY OF THE EXTRACT OF THE 27TH MEETING OF THE BOARD OF DIRECTORS DATED 17/08/2012 SIGNED BY THE PETITIONER DATED 31/10/2012.**
- EXT.P3: TRUE COPY OF THE LETTER NO. KTDC/PA1/92/2012 DATED 17/11/2012 ISSUED TO THE GOVERNMENT.**
- EXT.P4: TRUE COPY OF THE NOTE DATED 10/12/2012 SIGNED BY THE 2ND RESPONDENT AND ADDRESSED TO THE PETITIONER.**
- EXT.P5: TRUE COPY OF THE LETTER NO. KTDS/PA1/92/2012 DATED 10/12/2012 ISSUED BY THE 2ND RESPONDENT TO THE GOVERNMENT OF KERALA.**
- EXT.P6: TRUE COPY OF THE MEMO NO. KTDC/PA1/92/2013 DATED 09/04/2013 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**
- EXT.P7: TRUE COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT, DATED 16/04/2013.**
- EXT.P8: TRUE COPY OF THE MEMO NOS. 1 & 2, KTDC/PA1/92/2013, DATED 24/04/2013 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**
- EXT.P9: TRUE COPY OF THE MEMO OF CHARGES NO. KTDC/PA1/92/2013 DATED 10/05/2013 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**
- EXT.P10: TRUE COPY OF MEMO NO. KTDC/PA1/92/2013, DATED 6/06/2013 WITH STATEMENT OF ALLEGATIONS ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**
- EXT.P11: TRUE COPY OF THE REPLY DATED 20/06/2013 TO EXT.P9 BY THE PETITIONER TO THE 2ND RESPONDENT.**

CONTD. .. 2..

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- EXT.P12: TRUE COPY OF THE REPLY DATED 21/06/2013 TO EXT.P10 BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXT.P13: TRUE COPY OF THE COMPLAINT DATED 09/09/2013 BY THE RESPONDENTS TO THE INSTITUTE OF COMPANY SECRETARIES OF INDIA.
- EXT.P14: TRUE COPY OF THE DOMESTIC ENQUIRY REPORT, DATED 26/06/2014.
- EXT.P15: TRUE COPY OF THE REPRESENTATION DATED 03/08/2014 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXT.P16: TRUE COPY OF THE ORDER DATED 20/11/2014 PASSED BY THE INSTITUTE OF COMPANY SECRETARIES OF INDIA.
- EXT.P17: TRUE COPY OF THE SHOW CAUSE NOTICE NO. KTDC/PA1/92/2015 DATED 18/02/2015 ISSUED BY THE RESPONDENTS TO THE PETITIONER.
- EXT.P18: TRUE COPY OF THE REPLY DATED 25/02/2015 TO EXT.P17 BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXT.P19 COPY OF THE LETTER DTD. 22.09.14 ADDRESSED TO THE DIRECTOR (DISCIPLINE), ICSI WITH COPY ENDORSED TO THE RESPONDENT CORPORATION, A COPY OF WHICH TOGETHER WITH ANNEXURES THERETO.
- EXT.P20 COPY OF THE NOTICE DTD. 12.9.13 ISSUED BY THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA.
- EXT.P21 COPY OF THE WRITTEN SUBMISSION DATED 9.6.15 SUBMITTED BY THE PETITIONER WITHOUT ANNEXURES.
- EXT.P22 COPY OF DECISION OF THE COMPANY SECRETARIES INSTITUTE, DATED 9.6.15 IN ICSI/DC/195/2013 AND COMMUNICATED TO THE PETITIONER O 30.7.15
- EXT.P23 COPY OF ORDER PASSED BY THE HON'BLE HIGH COURT OF DELHI IN W.P.(C) NO. 8305 OF 2015 AND C.M.NO.17525/14 ON 28.8.15
- EXT.P24 COPY OF RELEVANT EXTRACT OF RULE 77 OF THE SERVICE RULES OF THE RESPONDENT CORPORATION.

CONTD.. 3..

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EXT.P25 COPY OF ORDER NO. KTDC/PA(3)314/12 DATED 21.8.12 ISSUED BY THE RESPONDENTS TO THE PETITIONER.

EXT.P26 COPY OF REPRESENTATION DATED 30.8.15 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS

EXT.R2(A) COPY OF THE COMPLAINT DTD. 20.3.13 FILED BY K.K. MOHANAN BEFORE THE MANAGING DIRECTOR, KTDC HOTEL & RESORTS LTD.

EXT.R2(B) COPY OF MEMO DTD. 5.4.13 ISSUED TO THE PETITIONER.

EXT.R2(C) COPY OF REPORT DT D. 17.4.13 SUBMITTED BY THE RERSOURCE CENTRE FOR CYBER FORENSIC OF CDAC.

EXT.R2(D) COPY OF ORDER DTD. 12.1.15 ISSUED BY THE DISCIPLINARY COMMITTEE OF THE INSTITUTE OF COMPANY SECRETARIES IN INDIA.

EXT.R2(E) COPY OF NOTE DTD. 27.4.07 ISSUED BY SRI. K.G. MOHANLAL, MNANAGING DIRECTOR OF 1S RESPONDENT.

EXT.R2(F) COPY OF LETTER BEARING NO. KTDC/PA1/92/2012 DTD. 17.11.12

EXT.R2(G) COPY OF RESOLUTION NO. 5684 DTD. 17.8.12 PASSED BY 1ST RESPONDENT.

EXT.R2(H) COPY OF DRAFT BEARING NO. KTDC/PA1/92/2012 DTD.8.11.12

EXT.R2(I) COPY OF LETTER BEARING NO. 93009/B1/12/TSM DTD. 15.4.13 ISSUED BY THE GOVT.

EXT.R2(J) COPY OF RELEVANT PAGES OF THE FILE NOTINGS FROM 22.11.12 TO 17.1.13.

EXT.RE(K) COPY OF EXPLANATION DTD. 20.4.13 SUBMITTED BY THE 2ND RESPONDENT TO EXT.R2(H)

// TRUE COPY //

P A TO JUDGE

SB

K. VINOD CHANDRAN, J.

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Dated this the 08th day of December, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that parallel proceedings are carried on by the Institute of Company Secretaries and the 1st respondent, against the petitioner, for the very same misconduct.

2. Briefly put, the petitioner was the Company Secretary appointed in the 1st respondent, who also had charge of the Managing Director for a period. The 1st respondent found that the petitioner had been misusing the equipments of the Corporation, specifically the computers provided for its officials within the company premises, for carrying on private work. The petitioner, styling himself as the Managing Director is also said to have misused his official capacity. The respondent Corporation suspended the petitioner and initiated proceedings as per Exts.P6, 8 and 9.

3. Ext.P6 alleged that the petitioner has fraudulently affixed the signature, to a communication to the Government, styling himself to be the Managing director, while he was not holding the post of Managing Director. The petitioner had by the said communication requested for promotion of one Electrician to the post of Overseer, against the decision of the Board of the Corporation. The petitioner was required to show cause on the said allegation. After considering his explanation Ext P-8 was issued which discloses that the instance of impersonation was admitted. Ext: P-8 also reveals an earlier memo dtd: 05-04-2013, having been issued which alleged serious misconducts of misuse of official position the use of the equipments of the Corporation as well as its employees and its assets for private business. Then, subsequently Ext.P9 memo of charges was issued, raising yet other allegations, wherein, the petitioner a Secretary and Finance Controller, had acted in violation of the directions of the Managing Director of the

Corporation and usurped to himself the powers specifically authorised to the Accounts Officer, by the Managing Director . Relevant also would be the fact that the petitioner at that point of time was a mere probationer in the Corporation.

4. All the above charges were enquired into and the report of the Enquiry Officer is produced at Ext;P-14. The petitioner was participated in the enquiry and the enquiry report was submitted to the disciplinary authority, the Managing Director. In the mean while the Corporation had also informed the Institute of Company Secretaries of India, about the misconducts alleged against the petitioner, who is a member of such institute, by virtue of which alone he is appointed as the Company Secretary of the Corporation, which designation carries with it statutory duties and responsibilities. The petitioner, as a member of the Institute of Company Secretaries of India, a creature of statute, had to maintain certain norms and professional standards, failing which the Institute also could

proceed against him visiting him with the consequences as laid down in the statute, with which we are not presently concerned.

5. The disciplinary committee of the Institute of Company Secretaries of India also initiated proceedings against the petitioner and an order was passed at Ext.P16, styled to be a preliminary order, where the petitioner was tentatively found to be guilty of the offences alleged and asked to give further explanation on the same. The petitioner was then issued with a show cause notice at Ext.P17 seeking explanation as to why the petitioner's services shall not be terminated, on the basis of Ext.P16. The petitioner hence approached this Court and obtained a stay of the above said show cause notice. The petitioner is said to be under suspension and the enquiry proceedings initiated by the Corporation has now reached the stage of submission of Enquiry report.

6. The learned Senior Counsel appearing for the respondent Corporation specifically points out that the petitioner

having been kept under suspension, the Corporation has the liability to pay subsistence allowance and in any event, the disciplinary committee of the Institute of Company Secretaries of India, has issued final orders as produced at Ext.P22. The learned Counsel for the petitioner submits that the petitioner has moved a writ against the order of the disciplinary committee, before the Delhi High Court and obtained a stay of the same. The petitioner seeks that no proceedings be taken under Ext.P17 and no proceedings be continued in the enquiry proceedings, till final orders are passed by the Delhi High Court.

7. There will be no difficulty in directing the respondent not to pass any orders under Ext.P17, but however, the enquiry initiated by the respondent Corporation has to reach its logical conclusion. Ext.P17 was issued on the findings in the preliminary order of the Committee of the Institute of Company Secretaries of India. It is also an admitted fact that now a final order has come, at Ext.P22, which the petitioner says is under

challenge before the High Court. In any event, to terminate the petitioner on the basis of the order of the disciplinary committee of the Institute of Company Secretaries of India, at this stage would be premature and that would depend upon the final orders to be passed in the writ petition before the Delhi High Court.

8. However a departmental enquiry has been initiated, in which a report has been filed by the Enquiry Officer before the disciplinary authority, which does not have any connection with the proceeding before the Institute of company Secretaries. Though one of the charges alleged is the cause of action for the proceeding by the Institute of Company Secretaries of India, it is to be mentioned that the proceedings deal with two aspects of the matter. The Institute of Company Secretaries of India is concerned with the professional conduct of its member, as per the statute, creating the Institute itself; while the Corporation is concerned with the misconduct of its

employee, as per its rules and regulations.

9. Suffice it to notice that the proceedings initiated by the Institute of Company Secretaries is one to maintain discipline of its members and the penalty would also be as per the enactment constituting such Institute. The finalization of such proceedings or the result of such proceedings has absolutely no bearing on the disciplinary enquiry proceeded with by the respondent Corporation, which is on the basis of the specific misconduct alleged against the petitioner, who was a Company Secretary on probation and would not at all require any consideration of the aspect of whether the petitioner had acted in consonance with his obligations under the Institute of Company Secretaries Act.

10. The respondent Corporation would be entitled to proceed against the petitioner on the basis of the findings in the enquiry report. The disciplinary authority has supplied the enquiry report and the petitioner also has given objections to the

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same. In such circumstance, the disciplinary authority shall, within one month from the date of receipt of a certified copy of this judgment, issue a notice of date of hearing and afford a personal hearing to the petitioner and pass final orders, within one month from the date of hearing.

The writ petition would stand disposed of. No Costs.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/08/12/2015

// true copy //

P.A to Judge.