

IN THE HIGH COURT OF KERALAAT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

WP(C).No. 13011 of 2015 (B)

PETITIONER:

T.N.UNNIKRISHNAN, AGED 52 YEARS
S/O.T.S.NARAYANAN, 'KARTHIKA', CHENDAMANGALAM
NORTH PARAVUR, ERNAKULAM DISTRICT.

BY ADVS.SRI.RENJITH THAMPAN (SR.)
SMT.P.R.REENA

RESPONDENTS:

1. UNION OF INDIA
REPRESENTED BY SECRETARY
MINISTRY OF CHEMICALS AND FERTILIZERS
SHASTRI BHAVAN, NEW DELHI, PIN-110 001.
2. THE FERTILIZERS AND CHEMICALS TRAVANCORE LIMITED
(A GOVERNMENT OF INDIA ENTERPRISES)
REPRESENTED BY CHAIRMAN AND MANAGING DIRECTOR
UDYOGAMANDAL, ERNAKULAM DISTRICT, PIN-683501.
3. CHAIRMAN AND MANAGING DIRECTOR
FERTILIZERS AND CHEMICALS TRAVANCORE LIMITED
UDYOGAMANDAL, ERNAKULAM DISTRICT, PIN-683501.
4. CHIEF MANAGER (HR)
HR DEVELOPMENT
FERTILIZERS AND CHEMICALS TRAVANCORE LIMITED
UDYOGAMANDAL, ERNAKULAM DISTRICT, PIN-683501.

R1 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL OF INDIA
R1 BY ADV. SMT.C.G.PREETHA, CGC
R2-R4 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R2-R4 BY ADV. SRI.P.GOPINATH
R2-R4 BY ADV. SRI.P.BENNY THOMAS
R2-R4 BY ADV. SRI.K.JOHN MATHAI
R2-R4 BY ADV. SRI.JOSON MANAVALAN
R2-R4 BY ADV. SRI.KURRYAN THOMAS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
24.06.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1 : TRUE COPY OF THE OFFICE ORDER DT.13-11-2002.
- EXT.P2 : TRUE COPY OF THE MEMORANDUM OF SETTLEMENT IN FORM H.
- EXT.P3 : TRUE COPY OF THE ORDER ISSUED TO THE PETITIONER DT.9-4-2015.
- EXT.P4 : TRUE COPY OF THE GOOD SERVICE ENTRIES GIVEN BY THE MANAGEMENT OF THE COMPANY DT.30-11-09.
- EXT.P5 : TRUE COPY OF THE GOOD SERVICE ENTRIES GIVEN BY THE MANAGEMENT OF THE COMPANY DT.25-7-06.
- EXT.P6 : TRUE COPY OF THE GOOD SERVICE ENTRIES GIVEN BY THE MANAGEMENT OF THE COMPANY DT.9-7-13.
- EXT.P7 : TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER DT.13-4-15.
- EXT.P8 : TRUE COPY OF THE MEDICAL CERTIFICATES DT.26-2-2006.
- EXT.P9 : TRUE COPY OF THE MEDICAL REPORT DT.26-1-2006.
- EXT.P9A : TRUE COPY OF THE MEDICAL REPORT DT.5-3-2012.
- EXT.P10: COPY OF NOTICE DT.5.5.2015 ISSUED TO THE PETITIONER.
- EXT.P11: COPY OF INFORMATION RECEIVED UNDER RIGHT TO INFORMATION ACT DT.25.4.15.
- EXT.P12: COPY OF LETTER DT.8.1.15 OF MINISTRY OF CHEMICALS AND FERTILIZERS TO THE PETITIONER.
- EXT.P13: COPY OF LETTER DT.23.1.15 ISSUED TO MINISTRY OF CHEMICALS AND FERTILIZERS.
- EXT.P14: COPY OF PROPOSAL OF TRANSFER DT.11.6.14 ISSUED BY THE 2ND RESPONDENT.
- EXT.P15: COPY OF LETTER DT.18.3.15 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- EXT.P16: COPY OF RELEVANT PAGE 24 & 25 OF GENERAL CONDITIONS OF CONTRACT EXECUTED BY FEDO WITH THE CONTRACTOR.
- EXT.P17: COPY OF LETTER DT.9.1.15 ISSUED BY THE 2ND RESPONDENT TO SURABHI STUDIO.
- EXT.P18: COPY OF MRI SCAN STUDY OF CERVICAL SPINE DT.26.1.06 AND 5.3.12.
- EXT.P18(A): COPY OF MRI SCAN STUDY OF CERVICAL SPINE DT.26.1.2006 AND 5.3.2012.
- EXT.P19: COPY OF OP RECEIPT ISSUED TO THE PETITIONER GOVT.AYURVEDA HOSPITAL, N.PARAVUR.
- EXT.P20: COPY OF CHARGE SHEET DT.19.5.2015 ISSUED TO THE PETITIONER.
- EXT.P21: COPY OF INFORMATION RECEIVED UNDER THE RTI ACT DT.5.11.14.
- EXT.P22: COPY OF BILL PAYABLE TO SURABHI DIGITAL STUDIO FOR THE MONTH OF NOVEMBER FOR THE WORK ORDER DATED 9.1.15.
- EXT.P23: COPY OF BILL FOR PHOTO COVERAGE OF THE MONTH OF DECEMBER, 2014 FOR ₹10,440/-.
- EXT.P24: COPY OF BILL FOR PHOTO COVERAGE FOR THE MONTH OF JANUARY 2015 FOR ₹14,500/-.
- EXT.P25: COPY OF LETTER DT.25.2.15 SHOWING EXPENDITURE INCURRED FROM SEPTEMBER, 2014 TO FEBRUARY 2015.
- EXT.P25(A): COPY OF COVERING LETTER DT.26.3.15 SUBMITTED ALONG WITH
- EXT.P26: COPY OF RTI APPLICATION SUBMITTED TO CENTRAL PUBLIC INFORMATION OFFICE DT.31.3.2015.
- EXT.P27: COPY OF REPLY TO EXT.P26 APPLICATION DT.20.4.15.
- EXT.P28: COPY OF BILL DT.13.12.2013 SUBMITTED BY CHAWLA STUDIO.
- EXT.P29: COPY OF BILL DT.16.12.2014 SUBMITTED BY CHAWLA STUDIO.

WP(C).No. 13011 of 2015 (B)

RESPONDENT(S)' EXHIBITS

ANNEXURE A: COPY OF APPOINTMENT ORDER DT.28.8.91 ISSUED BY THE
2ND RESPONDENT.

ANNEXURE B: COPY OF REQUEST DT.23.1.2015 OF THE DEPUTY GENERAL
MANAGER (E).

ANNEXURE C: COPY OF REPLY DT.25.4.15 SUBMITTED BY THE 2ND RESPONDENT
TO THE PETITIONER.

TRUE COPY

P.S.TO JUDGE

dsn

ANIL K.NARENDRA, J.

W.P.(C)No.13011 of 2015

Dated this the 24th day of June, 2015

JUDGMENT

The petitioner is working as Senior Photographer-cum-Publicity Assistant in the Administration Department of FACT Cochin Division at Ambalamedu. He entered service as Photographer-cum-Dark Room Assistant in the Public Relations Department of FACT Head Office at Udyogamandal, vide Annexure A order of appointment dated 28/8/1991. As evident from Ext.P1 office order dated 13/11/2002, apart from the duties and responsibilities of a Photographer, the petitioner was assigned with the duty to assist AM(PR) and AO(PR) in all activities of public relations. He was also assigned with the duty to cut and paste news clippings from newspapers on a regular basis; assist the officer concerned to reply the requests from tourists to visit the factory premises; make all necessary arrangements for the visiting teams by co-ordinating with the Training school; and do any

other work entrusted from time to time by GM(P) and AM (PR). While working as Senior Photographer-cum-Publicity Assistant in the Public Relations Department of FACT Head Office at Udyogamandal, the petitioner was deputed to the Administration Department of FACT Cochin Division at Ambalamedu, based on a proposal made by DGM (HR & ADMN) in Ext.P14 dated 11/6/2014. The reason stated in Ext.P14 for making such a proposal was that, since many corporate events are being hosted at Ambalamedu House, in order to have a Photographer in Cochin Division the petitioner, who is working as Senior Photographer-cum-Publicity Assistant in the Public Relations Department of FACT Head Office at Udyogamandal may be deputed to FACT Cochin Division and posted in the Administration Department. Though there is no post of Photographer in FACT Cochin Division, pursuant to the said proposal the petitioner was posted in the Administration Department on 17/6/2014.

2. According to the petitioner, the post of Photographer-cum-Publicity Assistant is a non-managerial

post and the transfer and posting of non-managerial staff is governed by Ext.P2 Memorandum of Settlement (MOU) reached between the Management and recognised Trade Unions representing the workmen. Clause 16.0 of Ext.P2 MOU, which deals with redeployment of surplus personnel, provides that the non-managerial personnel who are in excess of the revised strength consequent to the restructuring of non-managerial manpower strength will be redeployed either to other departments/sections/ areas within the Division or to other Divisions to ensure the effective utilization of such personnel and that, the Unions shall extend their full co-operation for this purpose and the redeployment of personnel will be done in consultation with the Unions.

3. The FACT Engineering and Design Organisation, (hereinafter referred to as 'FEDO') is a Division of FACT and the nature of work undertaken by FEDO is erection, design and maintenance of chemical plants. There is no post of Photographer in FEDO. Presently, FEDO is undertaking a civil work relating to the construction of buildings for NIT at

Nagaland. By Ext.P3 order dated 9/4/2015 of the 4th respondent, the petitioner, who was working as Senior Photographer-cum-Publicity Assistant in Cochin Division was deputed to FEDO and posted at NIT Nagaland Project Site, with immediate effect and he was directed to report before RCCM (NIT Nagaland) for further instructions.

4. Relying on Exts.P4, P5 and P6, Good Service Entries, the petitioner would contend that, he is having impeccable service in FACT. Against Ext.P3 order of transfer, the petitioner submitted Ext.P7 representation dated 13/4/2015 before the 3rd respondent, requesting that the order of transfer may be cancelled and he may be permitted to serve in the Public Relations Department of FACT at Udyogamandal. Relying on Ext.P8 medical certificate and Exts.P9 and P9(a) medical reports, the petitioner would contend that, he is undergoing Ayurvedic treatment for the injuries sustained in an accident happened in December, 2005, while he was on duty. Further, the petitioner is living with his family consisting of wife and two adolescent daughters and if he is asked to go

to a far away place their day-to-day life will be in peril, as there is nobody to take care of them. After submitting Ext.P7 representation, the petitioner has approached this Court in this writ petition seeking a writ of certiorari to quash Ext.P3 order of transfer; seeking a writ of mandamus commanding the 2nd respondent to retain him as Senior Photographer in the Public Relations Department of FACT at Udyogamandal; and seeking a writ of mandamus commanding the 2nd respondent to consider and pass orders on Ext.P7 representation on the basis of Ext.P1 work order and Ext.P2 MOU. During the pendency of the writ petition, the petitioner was issued with Ext.P10 notice dated 5/5/2015, by which he was directed to join duty at NIT Nagaland project site of FEDO on 12/5/2015.

5. A statement has been filed on behalf of respondents 2 to 4, contending that, the appointment of the petitioner vide Annexure A order of appointment dated 28/8/1991 was on condition that, the appointment carries with it the petitioner's liability to serve the company anywhere in India. The respondents would contend that,

the public relations function is common to FACT as a whole and the Public Relations Department of FACT caters to any service required by any Department or Division of FACT and that, the role of an Industrial Photographer is to serve the company in making documentaries, photography, etc. FEDO is one of the Divisions of FACT, engaged in project consultancy, detailed engineering, project construction, site management, etc. Of late, since there is practically no fresh investment in the fertilizer sector, the business prospects of FEDO have been diminishing and in order to revive the Division and to make it sustain on its own, initial steps were taken for diversifying into civil/infrastructure development projects and one of the projects taken by FEDO is the construction of buildings for NIT Nagaland. As per the terms and conditions of the contract, the said project has to be completed within a period of thirty months and it is in progress. Since the construction work of NIT Nagaland is one of the prestigious projects of FEDO, it is being managed by a dedicated team formed for its implementation. Pointing out the necessity of an Industrial

Photographer at NIT Nagaland site, the Project Manager submitted Annexure B request dated 23/1/2015, stating that, documentation of site activities at various stages of construction by way of photographs and videos will be useful to future Engineers of FEDO as reference, which can also be used for the business development of FEDO. It was with this requirement, the petitioner, who being an Industrial Photographer in FACT was identified to be a part of the project team for developing documentaries and for arranging an array of photographs at every stage of the project till completion of superstructure. Taking into consideration the merit of the petitioner in taking documentaries, Ext.P3 order dated 9/4/2015 was issued, asking him to report at NIT Nagaland site. Several managerial and non-managerial employees were also deputed to NIT Nagaland site and most of them have already reported for duty. The respondents would further contend that, Clause No.16 of Ext.P2 MOU deals with re-deployment of surplus non-managerial staff, in consultation with the Union. Since the petitioner is not re-deployed for

any other work, consultation with the Union is not required. The petitioner is only deputed temporarily to NIT Nagaland site of FEDO for a specific work and for a specified period, i.e., till completion of superstructure of the buildings for NIT Nagaland. Ext.P7 representation submitted by the petitioner, requesting to cancel Ext.P3 order has been considered and rejected by Annexure-C reply dated 25/4/2015 and the petitioner was advised to report NIT Nagaland site on or before 29/4/2015.

6. The petitioner has also filed a reply affidavit, reiterating the contentions raised in the writ petition. The petitioner would contend that, there is only one post of Photographer at the Head Office of FACT at Udhyogamandal, in which he was working for the past 24 years, and it was without any valid reasons he was transferred to Cochin Division of FACT at Ambalamedu, in June, 2013. Ext.P11 reply received under the Right to Information Act would also show that, there is no post of Photographer in the Cochin Division of FACT. The petitioner would contend further that, there are grave allegations

regarding misappropriation of the funds in FACT, and it is understood that, without his knowledge and consent, a complaint was filed before the Ministry of Chemicals and Fertilizers, alleging grave misappropriation of funds, nepotism and other irregularities in FACT. The Ministry had made certain enquiries and issued Ext.P12 letter dated 8/1/2015, requesting the petitioner to furnish a certificate regarding the allegations in the aforesaid complaint. He sent Ext.P13 reply addressed to the Under Secretary to Government of India, Ministry of Chemicals and Fertilizers, stating that, he has not filed any such complaint before the Ministry. The petitioner has also produced Ext.P14, the order of transfer dated 11/6/2014, by which he was deputed to Cochin Division of FACT and posted in the Administration Department. The petitioner would also contend that, after he was transferred to Cochin Division of FACT at Ambalamedu in June, 2013, he was not assigned with any work, in spite of the fact that, the reason stated in Ext.P14 for deputing the petitioner to Cochin Division of FACT at Ambalamedu was that, many corporate events are

being hosted at Ambalamedu House and there is necessity to have a Photographer in the Cochin Division. After the petitioner's transfer to Cochin Division of FACT at Ambalamedu, LNG Master Class Programme was conducted at Ambalamedu House. Though the petitioner, who is an expert Photographer, was sitting idle at Ambalamedu, the 2nd respondent brought three professional Photographers from Delhi by spending more than ₹2,00,000/- for covering the said event and entrusted the job to one Chawla of M/s. Chawla Studio, New Delhi, who is closely associated to the present Managing Director of FACT. Ext.P15 reply dated 18/3/2015 received under the Right to Information Act contains the details of the expenditure incurred for engaging M/s. Chawla Studio, New Delhi, for covering LNG Master Class programme held at Ambalamedu House in October, 2014. The petitioner would contend further that, at NIT Nagaland project site, the construction work is undertaken through a construction team of FEDO and the said work is sub-contracted to a private contractor. Ext.P16 is the relevant extract of the General Conditions of Contract

executed by FEDO with the sub-contractor. Clause 17.2 of Ext.P16 provides that, physical progress report including photographs shall be submitted by the contractor on the prescribed format and intervals, as decided by the Engineer-in-charge. Clause 17.6 provides further that, the contractor shall also make sufficient arrangement for photography/videography so that the photographs/video can be taken of any specific activity at any point of time. Therefore, the duty to arrange videographs and photographs of the progress of the work, at such interval as determined by the Engineers-in-charge is on the sub-contractor and not on FEDO or the 2nd respondent and therefore, there is no post of Photographer at NIT Nagaland site of FEDO and that, the petitioner is deputed to that site only to harass him. Relying on Ext.P17 work order dated 9/1/2015, the petitioner would point out that, the 2nd respondent had entered into a contract with M/s. Surabhi Digital Studio, Eloor, for a period of 2 years, by spending ₹2,40,000/- for covering the events in the Head Office at Udyogamandal, while the petitioner, who is a professional

photographer in FACT, is shunted out to Ambalamedu, and was sitting idle without any work in photography. Relying on Ext.P18 scan report dated 26/1/2006 and Ext.P19 receipt, the petitioner would contend that, he is in constant treatment and medication in connection with an injury suffered in an on-duty accident occurred on 31/12/2005, and because of the physical ailment he is not a position to report to NIT Nagaland site. During the pendency of the writ petition, the 3rd respondent has issued Ext.P20 charge memo 19/5/2015 to the petitioner, raising various allegations.

7. Along with I.A.No.7768 of 2015, the petitioner has produced Ext.P21 reply received under the Right to Information Act, furnishing the particulars of expenditure incurred on photography/ videography in connection with various programmes conducted at the Head Office at Udyogamandal, for the period from 17.6.2014 to 31.8.2014, showing a total expenditure of ₹23,700/-. The documents produced as Exts.P22 to P24 are bills raised by one Surabhi Digital Studio for photo coverage for the

months November and December, 2014 and also for January, 2015, for a sum of ₹4,880/-, ₹10,440, and ₹14,500/- respectively. Ext.P25 letter would indicate that, the expenditure incurred for photo coverage at Udyogamandal for the period from September, 2014 to February 2015 would come to ₹23,700/-. Based on Ext.P26 application submitted under the Right to Information Act, the petitioner is furnished with certain information relating to the payments made to M/s. Chawla Studio, New Delhi, vide Ext.P27. Exts.P28 and P29 are bills raised by M/s. Chawla Studio for digital photography/video coverage in connection with certain conferences held at New Delhi. Going by the reply given in Ext.P27, there is no contract signed by FACT and M/s. Metis Energy Consulting, Delhi for the LNG Master Class Joint Venture Programme held at Ambalamedu House, in October, 2014.

8. Pursuant to the order passed by this Court dated 1.6.2015, the respondents have filed an additional affidavit along with I.A.No.7863/2015, adverting to various allegations raised in the reply affidavit filed by the

petitioner. The respondents would contend that, the petitioner was deputed to NIT Nagaland site on administrative exigencies. As far as Exts.P12 and P13 communications are concerned, those are communications between the Government of India and the petitioner and the respondents came to know about the same only on receipt of a copy of the reply affidavit filed by the petitioner. Further, Ext.P12 communication is dated 8.1.2015, whereas, the petitioner was posted to Cochin Division on 14.6.2014, six months prior to that communication. According to the respondents, LNG Master Class Programme conducted at Ambalamedu House from 9.10.2014 to 11.10.2014 was conceptualised and executed by M/s. Metis Energy Consulting Pvt. Ltd., New Delhi. They decided on various aspects of the programme like supply of on the spot identity cards to delegates, course materials, faculty, documentation of the event, photo/video coverage, etc. The Photographer was arranged by M/s. Metis along with other arrangements and the payment towards the same was paid to M/s. Metis out of the total amount of

₹12,90,000/- collected. The delegates were given digital documents of their participation in the event utilising *in situ* editing and printing facilities. All these required a highly professional team, latest photos/video equipment facilities, etc. FACT has arranged the programme hall, infrastructure facilities, audio-visual arrangements in the programme hall, food and snacks, transportation facility to the delegates for the three days programme and collected ₹30,000/- per delegate as programme fee. The programme was attended by 43 delegates from various industries of South India like BPCL, IOCL, MCL, RCF, GAIL, HLL, VSES, HAL, MPCL and Cochin Shipyard. Regarding the project at NIT Nagaland, the respondents would reiterate that, it is one of the prestigious projects undertaken by FEDO so far. The construction at site is difficult due to the soil conditions and frequent landslides. Hence it is imperative that, documentation of various activities at site by way of photographs/videos at various stages are taken so that these can be used for educating other existing and future Engineers and also for business development of FEDO. For

this purpose, an experienced photographer/videographer is needed at the project site. The respondents would contend that, although photography/videos were included in the scope of the contractors as per Clauses 17.2 and 17.6 of Ext.P16 General Conditions of Contract, the photographs/videos furnished by them will be indicating the progress of work only and will not meet the above requirement. Further, many of the activities not included in the scope work of the contractors will have to be documented and hence a separate photographer/videographer is required. The respondents would also contend that, the services of contract photographers are being engaged in FACT even from the year 2009 onwards and that professional photographers are selected by tender process and payments are effected on work to work basis. Further, the contract arrangement for photography requirements existed in FACT even when the petitioner was posted at the Head Office. The respondents would also state that, while the writ petition was pending, the petitioner approached the Press with gross allegations

against the Management and its senior officials, which is a grave misconduct, for which he was issued with Ext.P13 charge sheet. The respondents would also point out that, the petitioner has not raised any valid grounds to challenge Ext.P3 order of transfer and even according to him, he is sitting idle at Cochin Division.

9. Heard arguments of the learned counsel for the petitioner and also the learned Standing Counsel for the respondents.

10. The learned Senior Counsel Counsel for the petitioner would contend that, Ext.P3 order of transfer is issued absolutely without any valid reasons and it is even against Ext.P2 MOU arrived between the Management and the registered Trade Unions representing the workmen. Relying on Ext.P1 office order regarding work allocation, the learned Senior Counsel would contend that, the duty of the petitioner is to cut and paste news clippings from newspapers on regular basis and to assist the officers concerned in the Public Relations Department of FACT to reply the requests from tourists to visit the factory

premises, etc. The learned Senior Counsel would also contend that, there is no post of Photographer in FEDO and that, the construction work undertaken by FEDO at NIT Nagaland site is only civil constructions and there is absolutely no need of a Photographer at that site. Therefore, Ext.P3 order of transfer is absolutely illegal and issued only to victimise the petitioner and hence the same is liable to be interfered with by this Court. The learned Senior Counsel would also submit that, the transfer of the petitioner to such a far off place will cause serious prejudice to his family, consisting of wife and two children.

11. Per Contra, the learned Standing Counsel for the respondents would contend that, Ext.P3 order of transfer is issued on administrative exigencies and that in the absence of any allegation that the said order is vitiated by malafides, the petitioner is not entitled for any of the reliefs prayed for in the writ petition. The Public Relations Department of FACT caters any service required by any of its Department or Division and the petitioner was deputed to NIT Nagaland site in view of the administrative necessity

pointed out in Annexure B request dated 23/1/2015 of the Project Manager Further, Clause No.16 of Ext.P2 MOU relied on by the learned Senior Counsel for the petitioner deals with redeployment of surplus non-managerial staff, whereas, by Ext.P3, the petitioner is only deputed temporarily to NIT Nagaland site for a specific work and for a specified period, i.e., till the completion of superstructure of the buildings for NIT Nagaland, which according to the learned Standing Counsel will be completed within a short span of 10-11 months. .

12. I have considered the rival submissions made at the Bar.

13. It is not in dispute that, vide Annexure A order the petitioner was initially appointed as Photographer-cum-Darkroom Assistant in the Public Relations Department of FACT on condition that the appointment carries with it his liability to serve the Company anywhere in India. The petitioner has also not disputed the specific stand taken by the respondents that, the public relations function is common to FACT as a whole and that, the Public Relations

Department of FACT caters to any service required by any Department or Division of FACT. While the petitioner was working as Photographer-cum-Publicity Assistant in the Public Relations Department of FACT Head Office at Udyogamandal, he was deputed and posted in the Administration Department of FACT Cochin Division at Ambalamedu, pursuant to the proposal made in Ext.P14 dated 11/6/2014, on the ground that many corporate events are being hosted at Ambalamedu House and there is necessity to have a Photographer in the Cochin Division. Though the petitioner would contend that, he was transferred to Cochin Division without any valid reasons, for reasons best known to the petitioner, he has not chosen to challenge the aforesaid order of transfer, instead he joined Cochin Division pursuant to that order.

14. A reading of Ext.P14 order would show that, the petitioner was deputed to the Administration Department of FACT Cochin Division at Ambalamedu, stating that, since many corporate events are being hosted at Ambalamedu House there is need for a Photographer in Cochin Division.

But the materials on record make it explicitly clear that, after his transfer to Cochin Division, the petitioner was sitting idle in the Cochin Division of FACT, whereas, professional photographers from Delhi were brought, spending lakhs of rupees, for covering various programmes. In addition to this, a contract was entered into with a Digital Studio at Eloor for covering the events in the Head Office of FACT at Udyogamandal, for a period of 2 years, spending few lakhs more. The documents in support of these contentions are brought on record along with the reply affidavit filed by the petitioner and also the interlocutory application filed for accepting additional documents. As evident from Exts.P4, P5 and P6, the Management had even appreciated the excellent and dedicated service rendered by the petitioner as Photographer-cum Publicity Assistant. The allegations made by the petitioner, relying on the aforesaid additional documents, if taken in its face value, may constitute a case of mismanagement, maladministration, etc. in the affairs of the company, but, that will not in any manner entitle the

petitioner to succeed in his challenge against Ext.P3 order of transfer by which he was posted from the Administration Department at Ambalamedu to NIT Nagaland site.

15. The learned Senior Counsel for the petitioner would contend that, the petitioner was victimised on the basis of a complaint filed before the Ministry of Chemicals and Fertilisers, alleging grave misappropriation of funds, nepotism and other irregularities in FACT. According to the petitioner, such a complaint was filed before the Ministry without his knowledge or consent. Based on that complaint, the Ministry made certain enquiries and issued Ext.P12 letter dated 8/1/2015, requesting the petitioner to furnish a certificate regarding the allegations contained in the aforesaid complaint. On receipt of Ext.P12, the petitioner sent Ext.P13 reply, stating that, he has not submitted any such complaint before the Ministry. The respondents have categorically stated that, they came to know about Exts.P12 and P13 communications between the Government of India and the petitioner, only on receipt of a copy of the reply affidavit filed by the petitioner in this writ

petition. The respondents have also pointed out that, Ext.P12 communication is dated 8/1/2015, whereas, the petitioner was posted to Cochin Division of FACT on 14/6/2014, i.e., much before that communication. Therefore, the contention of the learned Senior Counsel for the petitioner that, he was victimised on the basis of the complaint submitted by some others before the Ministry of Chemicals and Fertilisers can only be rejected.

16. The learned Senior Counsel for the petitioner would then contend that, there is absolutely no administrative exigency in his transfer to NIT Nagaland Project Site, where the construction work undertaken by FEDO is only civil constructions, which require no need of an experienced Industrial Photographer like the petitioner. But, the specific stand taken by the respondents is that, the construction work of NIT Nagaland, being one of the prestigious projects of FEDO, it is being managed by a dedicated team formed for its implementation. In Annexure B request dated 23/1/2015, the Project Manager of NIT Nagaland site pointed out the necessity of a Photographer

for documentation of site activities at various stages of construction, by way of photographs and videography, as it will be useful to future Engineers of FEDO for reference, which can also be used for the business development of FEDO. Relying on Annexure B letter, the respondents would contend that, the petitioner being an Industrial Photographer was identified to be part of the Project Team for developing documentaries and for arranging an array of photographs at every stage of the project till completion of the superstructure. In the additional affidavit filed, the respondents have stated that, the construction at NIT Nagaland site is difficult due to the soil conditions and frequent landslides. Hence, it is imperative that documentation of various activities at site by way of photographs/videos at various stages are taken so that it can be used for educating other existing and future Engineers and also for business development of FEDO. Therefore, there is requirement of an experienced photographer/videographer at NIT Nagaland site and it was in order to meet this administrative exigency, the

petitioner was posted to NIT Nagaland site, by Ext.P3 order of transfer. The pleadings and documents on record relied on by the petitioner are not at all sufficient to draw an inference that the administrative exigency pointed out by the respondents is not there at NIT Nagaland site.

17. Relying on Ext.P16, General Conditions of Contract executed by FEDO with the Sub-Contractor at NIT Nagaland site, the learned Senior Counsel for the petitioner would contend that, it is the responsibility of the Sub-Contractor to make sufficient arrangements for photography/videography and in such circumstances, the administrative exigency stated by the respondents is without any factual basis. A reading of Clause Nos. 17.2 and 17.6 of Ext.P16 General Conditions of Contract make it explicitly clear that, the Contractor has to submit physical progress report including photographs on the prescribed format at intervals, as decided by the Engineer-in-Charge and that, the Contractor shall also make sufficient arrangement for photography/videography, so that the photographs/videos can be taken of any specific activity at

any point of time. The respondents would contend that, although photography/videography are included in the scope of the Contract as per the aforesaid clauses of Ext.P16, the photos/videos furnished by the Contractor will indicate progress of the work only. On the other hand, the respondents want documentation of the various activities at site by way of photographs/videos at various stages so that it can be used for educating other existing and future Engineers and also for business development of FEDO. It was for this purpose, the requirement of an experienced photographer/videographer was noticed at the NIT Nagaland Project site, which resulted in Ext.P3 order of transfer, posting the petitioner at that site.

18. In **State of M.P. v. S.S. Kourav (1995 (3) SCC 270)** the Apex Court held that, "the Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. It is for the administration to take appropriate decision and such decision shall stand unless they are vitiated either by malafides or extraneous considerations without any factual

background foundation.” In **Somesh Tiwari v. Union of India (2009 (2) SCC 592)** the Apex Court held that, “an order of transfer passed on material which was non-existent not only suffers from total non-application of mind on the part of the authorities, but also suffers from malice in law.” Following the aforesaid judgments of the Apex Court, a Division Bench of this Court (in which I was a party), in **Gopinathan M and another v. State of Kerala and others (2014 (4) KLT 285)** held that “the order of transfer does not affect any legal rights of the employee and the Court or Tribunal cannot interfere with an order of transfer or posting, which is made in public interest or on administrative exigency. However, if the power of transfer is abused or the transfer is not made in public interest, but for collateral purposes and with oblique motive, the order would stand vitiated, warranting interference of the Court or Tribunal. When an order of transfer is found to be one without any factual foundation or legal support, it is only a colourable exercise of power and such exercise of power cannot be sustained in the eye of law.”

19. In the case on hand, the petitioner has no case in the writ petition that, Ext.P3 order of transfer is vitiated by malafides. According to the petitioner, there is no administrative exigency in transferring him to NIT Nagaland site and that, it was without any valid reasons he has been transferred to that site. But, the materials on record, which I have already referred to, make it explicitly clear that the petitioner was ordered to be transferred to NIT Nagaland site for the specific purpose of documentation of various activities at the project site by way of photographs/videos. When the Public Relations Department of FACT caters the public relations functions and requirements of any Department or Division of FACT, the petitioner cannot contend that, his posting to NIT Nagaland site of FEDO is without any administrative exigency or that Ext.P3 order of transfer is without any factual basis. Therefore, it can only be concluded that, Ext.P3 order of transfer is one issued on administrative exigency and supported by factual foundation. The contentions to the contra raised by the learned Senior Counsel for the petitioner can only be

rejected. Further, there is nothing on record to infer that, Ext.P3 order of transfer has been issued for any collateral purpose or with any oblique motive. The petitioner has also not made out any specific case in this regard, warranting interference of this Court.

20. In **Gopinathan's case (supra)**, this Court was dealing with a case in which the materials on record indicate that, the order of transfer was issued without any factual foundation or legal support. It was held that, an order of transfer passed on materials which were non-existent not only suffers from total non-application of mind, but also suffers from malice in law. Paragraph 13 of the judgment reads thus;

“**13.** In the case on hand, the materials on record clearly indicate that, Annexure-A1 order of transfer was issued without any factual foundation or legal support. Annexure-A1 order of transfer passed on materials which were non-existent not only suffers from total non-application of mind on the part of the 3rd respondent, but also suffers from malice in law. The said order is only a colourable exercise of power by the 3rd respondent. Similarly, the finding of the

2nd respondent in Annexure-A4 order that the transfer of the petitioners is essential to maintain the harmonious atmosphere of the school and to have a good educational environment is also without any factual foundation or legal support. Therefore, in our view, the Tribunal failed to take note of the above crucial aspects of the matter while passing Ext. P2 order.”

Therefore, the decision of this Court in **Gopinathan's case (supra)** was on an entirely different factual matrix and the principle laid down in the said judgment cannot be extended to a case like the one on hand, in which the order of transfer is one issued on administrative exigency and supported by factual foundation.

21. Relying on Clause No.16 of Ext.P2 MOU, the learned Senior Counsel for the petitioner would contend that, Ext.P3 order of transfer is against the terms of the aforesaid MOU. But, a reading of Clause No.16 of Ext.P2 MOU makes it explicitly clear that, it deals with redeployment of surplus non-managerial staff, which the Management has to make in consultation with the Union. In the case of the petitioner, there is no redeployment as a

surplus staff, doing any other work, but, he is only deputed temporarily to NIT Nagaland site of FEDO for a specific work and for a specified period, i.e., till completion of the superstructure of the building for NIT, Nagaland. Therefore, Ext.P3 order of transfer is in no way against the terms of the Ext.P2 MOU. In such circumstances, the contention raised by the learned Senior Counsel for the petitioner, relying on the principle laid down in the judgment of this Court in **Damodaran v. State of Kerala (ILR 1983 (1) Kerala 143)** that, "when guidelines are laid down in the matter of transfer, no transfer can be effected admittedly in violation of the guidelines laid down therein," can only be rejected.

22. In **State Bank of India v. Anjan Sanyal and others (2001 (5) SCC 508)**, a decision relied on by the learned Standing Counsel for the respondents, the Apex Court held that, "an order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court

finds that either the order is malafide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order.”

23. In the case on hand, it is not in dispute that, going by the terms and conditions of Annexure A order of appointment the petitioner is liable to serve the company anywhere in India. In the writ petition, the petitioner could not make out even a prima facie case warranting any interference on Ext.P3 order of transfer. When Ext.P3 order is issued on administrative exigency, the petitioner cannot contend that he cannot be sent to far away places since there is nobody to take care of his spouse and children. Further, the posting of the petitioner to NIT Nagaland site is not of a permanent nature and is for a specific work and for a specified period, i.e., till completion of the superstructure of the buildings. The learned Standing Counsel for the respondents has also submitted that, the construction of the superstructure will be completed by 10 to 11 months and thereafter, the petitioner will be relieved

from NIT Nagaland site.

24. The learned Senior Counsel for the petitioner would then contend that, if the petitioner is asked to go to a far off place like Nagaland, his family consisting of wife and two daughters will be in peril as there is nobody to take care of them. Relying on Ext.P8 medical certificate and Exts.P9 and P(a) medical reports, the learned Senior Counsel for the petitioner would contend that, the petitioner is undergoing ayurvedic treatment for the injuries sustained in an accident happened in December 2005, while he was on duty and therefore, he may not be posted to NIT Nagaland site. The petitioner has submitted Ext.P7 representation before the 2nd respondent highlighting his grievances in this regard. But, the said representation was rejected by Annexure C reply dated 25/4/2015 and the petitioner was asked to report to NIT Nagaland site on or before 29/4/2015. Valid reasons have been stated in Annexure C to reject the request made by the petitioner in Ext.P7 and the reasoning of the 2nd respondent contained therein is neither perverse nor patently illegal, warranting

an interference of this court under Article 226 of the Constitution of India.

25. I find absolutely no grounds to interfere with Ext.P3 order of transfer. The petitioner is not entitled for any of the reliefs prayed for.

In the result, the writ petition fails and the same is dismissed. No order as to costs.

Sd/-
ANIL K.NARENDRA, JUDGE

skj/dsn