

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

WP(C).No. 19481 of 2015 (S)

PETITIONER :

**M.A.POOKOYA,
ASMAS COTTAGE, VALIAMARAM WARD,
ALAPPUZHA-688 001.**

BY ADV. SRI.ANIL KUMAR M.SIVARAMAN

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM- 695 001.**
- 2. THE SECRETARY,
GENERAL ADMINISTRATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.**

BY SR GOVERNMENT PLEADER SRI.P.I.DAVIS

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1: TRUE PHOTOCOPY OF THE REPORT CAME IN THE NEWSPAPER.
- EXHIBIT-P2: TRUE PHOTOCOPY OF THE BIO DATA OF COMMISSIONER SRI.SONI
THENGAMOM.
- EXHIBIT-P3: TRUE PHOTOCOPY OF REPORT CAME IN DECCAN CHRONICLE DATED
26.5.2015.
- EXHIBIT-P4: TRUE PHOTOCOPY OF THE NEWS ITEM CAME IN THE
MATHRUBHOOMI DAILY DATED 24/3/2015.
- EXHIBIT-P4(A): TRUE ENGLISH TRANSLATION OF EXHIBIT-P4.
- EXHIBIT-P5: TRUE COPY OF THE REPRESENTATION DATED 30.4.2015 SUBMITTED
BEFORE THE CHIEF SECRETARY.
- EXHIBIT-P6: TRUE COPY OF THE QUESTIONNAIRE AND ITS ANSWERS ISSUED TO
M.T.THOMAS, THE STATE COMMITTEE MEMBER OF NCPRI
- EXHIBIT-P7: TRUE COPY OF THE NOTIFICATION PUBLISHED IN THE WEBSITE OF
MINISTRY OF PERSONNEL AND PUBLIC GRIEVANCES AND PENSIONS
(DEPARTMENT OF PERSONAL AND TRAINEE DATED 9/9/2015)

RESPONDENT(S)' EXHIBITS

- EXHIBIT R2(A): COPY OF THE G.O.(RT) NO.1995/2015/GAD DATED 19/03/2015

/TRUE COPY/

P.S.TO JUDGE

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ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.P. (C) No. 19481 of 2015

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Dated this, the 23rd day of November, 2015

J U D G M E N T

Ashok Bhushan, C.J.

Heard the learned counsel for the petitioner and the learned Government Pleader.

2. In this writ petition filed as a Public Interest Litigation, petitioner has prayed for the following reliefs;

“i) To issue a writ of mandamus or any other writ, direction or order commanding the respondents 1 and 2 to fill the existing vacancies of State Information Commissioners in accordance with the directions and guidelines issued by Hon'ble Supreme Court in *Namith Sarma Vs Union of India*.

ii) issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to consider Ext.P5 representation and pass appropriate orders and steps to ensure a fair and transparent mechanism in the selection processes to fill the vacancy of State Information Commissioner.

iii) issue a writ of mandamus or any other appropriate writ order or direction to the Chief Secretary of the State to take necessary steps to

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ensure proper functioning of the Kerala State Information Commission."

3. Petitioner's case in the writ petition is that, as on date, there are four vacancies in the State Information Commission, which is a six member body including the Chief Information Commissioner. The grievance of the petitioner is that although the Right to Information Act, 2005 provides the manner and procedure for making appointment, appropriate steps have not been taken to complete the selection. On account of non functioning of the State Information Commission, people in general are suffering since their applications, appeals etc., are not being promptly considered and the State Information Commission has completely been paralysed.

4. We have issued directions on 22/7/2015, 6/10/2015 and lastly on 30/10/2015 to bring on record the steps taken regarding the appointment. Learned counsel for the petitioner has also referred to order dated 9th September, 2015 issued by the Government of India for appointment of Chief Information Commissioner and Information Commissioners in the Central

Information Commission. He submits that the said Government Order provides for a methodology for inviting application for the said post.

5. Counter affidavit has been filed on behalf of the General Administration Department of the Government along with which order dated 19th March, 2015 issued by the Government of Kerala has been brought on record, which provides that a Committee as contemplated under Section 15(3) of the Right to Information Act, 2005 has already been constituted. Although the Committee has been constituted on 19/3/2015, no further steps have been brought on record after constitution of the Committee. The post of State Information Commissioner is an important functionary to fulfil the objectives of the Right to Information Act enacted by Parliament. On account of non appointment and non functioning of the said office, prejudice is caused to the rights of public in general. In the present, we are of the view that a case has been made out to issue a direction to the respondents to complete the process of appointment to the vacant post of State

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Information Commissioner as per the established procedure. This process shall be completed within six weeks from the date of production of a copy of this judgment.

Writ petition is disposed of as above.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp23/11/2015

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PS to Judge