

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

WP(C).No. 27242 of 2013 (E)

PETITIONER

**M.MURALEEDHARAN
SENIOR JOINT DIRECTOR (STATISTICS) OFFICE OF
THE CHIEF ENGINEER(IRRIGATION AND ADMINISTRATION)
THIRUVANANTHAPURAM**

BY ADV. SRI.C.E.UNNIKRISHNAN

RESPONDENTS:

- 1. STATE OF KERALA
REP BY ITS SECRETARY TO GOVERNMENT
DEPARTMENT OF HOME SECRETARIAT
THIRUVANANTHAPURAM-695001**
- 2. THE DIRECTOR VIGILANCE & ANTI CORRUPTION BUREAU,
THIRUVANANTHAPURAM-695033**
- 3. THE DEPUTY SUPERINTENDENT OF POLICE
VIGILANCE & ANTI CORRUPTION BUREAU, KOZHIKODE**

ADDITIONAL RESPONDENT:

**MR.JOSE @ JOSEPH, S/O.MATHAI,
MUKHALAYIL HOUSE,
PULLOORAMPARA P.O., THIRUVAMBADI AMSOM AND DESOM.**

(ADDL. R4 IMPEADED AS PER ORDER IN I.A.NO.4544/2014 ON 21.3.2014)

**R1 TO R3 BY ADV. SRI.TOM JOSE PADINJAREKARA, ADDL.DGP
R4 BY ADV. SRI.P.M.MOHAMMED SHIRAZ**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 27242 of 2013 (E)

APPENDIX

PETITIONER(S)' EXHIBITS

P1:-TRUE COPY OF THE COMPLAINT DTD 10/9/2009

P2:-TRUE COPY OF THE ORDER PASSED IN CMP NO 547/2009 DTD 20/9/2012 PASSED BY THE LEARNED ENQUIRY COMMISSIONER AND SPECIAL JUDGE, KOZHIKODE

P3:-TRUE COPY OF THE FIRST INFORMATION REPORT NO 6/2012 DTD 9/10/2012

P4: COPY OF THE PROCEEDINGS OF THE ADDL. SECRETARY (FINANCE).

P5. COPY OF THE PROCEEDINGS DTD.26.4.2008 OF THE DISTRICT FINANCE INSPECTING OFFICER.

P6. COPY OF THE PROCEEDINGS OF THE ADDL. SECRETARY (FINANCE) DTD.16.3.2009.

RESPONDENT(S)' EXHIBITS

Anx. R3(A) COPY OF THE PETITION BEFORE THE ENQUIRY COMMISSIONER & SPECIAL JUDGE, KOZHIKODE.

Anx. R3(B) COPY OF THE REPORT OF THE PRELIMINARY ENQUIRY REPORT.

Anx. R3(C) COPY OF THE ORDER DATED 20.9.2012.

Anx.R3(D) COPY OF THE FIR.

Anx.R3(E) COPY OF THE ORDER PASSED BY THE DIRECTOR, VIGILANCE & ANTI CORRUPTION BUREAU DATED 31.3.2014.

Anx.R3(F) COPY OF THE LETTER DTD.5.11.2008.

Anx. R3(G) COPY OF THE ORDER DTD.16.3.2009.

Anx. R3(H) COPY OF THE LETTER DTD.21.11.2015.

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///True copy///

P.S. to Judge

ALEXANDER THOMAS, J.

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W.P.(C).No. 27242 of 2013

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Dated this the 4th of December, 2015

J U D G M E N T

The petitioner, who was earlier holding the post of Joint Director of Economics & Statistics under the Department of Statistics of the Government of Kerala, is mainly aggrieved by Ext.P-2 order dated 20.9.2012 rendered by the learned Enquiry Commissioner & Special Judge, Kozhikode, on Criminal Miscellaneous Petition No. 547/2009, which is said to be issued under Sec.156(3) of the Code of Criminal Procedure, at the instance of a complaint filed by the additional 4th respondent. The sheet anchor of the petitioner's case is that the said Ext.P-2 impugned order was passed by the Court of Enquiry Commissioner & Special Judge, Kozhikode, without getting previous sanction of the Government, which is held to be mandatory in such situations in the ruling of the Apex Court in Anil Kumar v. Aiyappa reported in (2013) 10 SCC 705 = 2013 (4) KLT 125(SC). It is common ground that the previous sanction of the Government as envisaged in Sec.19 of the Prevention of Corruption Act has not

been granted in this case. It is on this basis that the petitioner contends that Ext.P-2 order is liable to be quashed and therefore all further consequential proceedings passed by the learned Special Judge and the further consequential proceedings initiated by the Vigilance & Anti Corruption Bureau will fall to ground. It is in the light of these aspects that the petitioner has instituted the present Writ Petition (Civil) with the following prayers:

- “a) To call for the records leading up to and inclusive of Exts.P1 complaint, P2 order and P2 First Information Report and Issue a writ in the nature of certiorari or other appropriate writ or order quashing the same.
- b) Declare that Exts.P2 and P3 are contrary to Section 19(1) of the Prevention of Corruption Act, 1988.”

2. From the statement dated 26.10.2015 filed by the 3rd respondent, it can be seen that though the Vigilance Investigating Officer had earlier recommended that the allegations against the petitioner may be referred to the Vigilance Tribunal for further action, the same has not been accepted by the Director, Vigilance & Anti Corruption Bureau, who on consideration of the recommendation, has only decided to take necessary action for recovery of the alleged misappropriated amount of Rs.10,242/- from the petitioner, as discernible from Anx.R-3(e) proceedings dated 31.3.2014. The petitioner had subsequently retired from

service with effect from 30.4.2015. It is also common ground that a substantial portion of the very same allegations, which were considered by the Vigilance & Anti Corruption Bureau, was also the subject matter of consideration by the Inspection Wing under the Government in the Finance Department, as can be seen from paras X(a) of Ext.P4 and Ext.P-5. It can further be seen that as per Ext.P-4 issued by the Addl. Secretary (Finance), Government of Kerala, the same has been referred for the detailed consideration of the Government. It has also now come out that Government took a considered view of those allegations and as per Ext.P-6/Anx.R-3 (g) dated 16.3.2009, the Government has directed that the said allegation in Ext.P-4 inspection report stands dropped. Ext.P-6/Anx.R-3(g) dated 16.3.2009 is issued on behalf of the Government by the Addl. Secretary (Finance), Government of Kerala. It can further be seen from Ext.P6(2) dated 23.4.2009, that the District Finance Inspecting Officer, in compliance with the directions issued by the Government in Ext.P-6/Anx.R-3(g), has treated as those objections as closed. Accordingly, it was submitted by the petitioner's counsel on a previous occasion that nothing now survives in the matter and that the direction issued by the Vigilance

& Anti Corruption Bureau as per Anx.R-3(e) dated 31.3.2014 to recover the alleged amount of Rs.10,242/- has been issued without noting the decision taken by the Government as per Ext.P-6/Anx.R-3(g) dated 16.3.2009. On this aspect, the learned Addl. State Prosecutor was requested by this Court on 6.11.2015 to get instructions from the Government on the aspects covered by Exts.P-4 to P-6.

3. Now in compliance with the order dated 6.11.2015, additional statement dated 27.11.2015 has been filed on behalf of the 3rd respondent, through the Addl. Director General of Prosecution giving out the details on the basis of which the amount of Rs.10,242/- sought to be recovered, has been worked out by the Vigilance Bureau. From a reading of paras 2 and 3 of the said statement it can be seen that the difference amount said to have been obtained by the petitioner, which is more than the expended amount, comes to Rs. 6,567/- (viz., Rs. 15124 - Rs. 8557 = Rs. 6567). That apart, it is also stated therein that the petitioner had also claimed an amount of Rs.1,350/- as the alleged rent of the projector in the name of Multivision, Westhill, Kozhikode, said to have been used for training and further a receipt for an amount of

Rs. 2,325/- as rent of the chairs used for the programme, which were not actually for the programme, etc. and that therefore the total discrepancy amount comes to Rs.6567 + 1350 + 2325 = Rs. 10,242/-. It is further clear from the said statement that out of the aforestated differential amount of Rs. 6567/-, an amount of Rs. 5919/- has been written off by the Government as per Ext.P-6/R-3 (g) dated 16.3.2009. It is also fairly conceded by the respondents that the Government has made it clear in Ext.R-3(h) dated 21.11.2015 that the aforestated amount of Rs.5,919/-, which is the subject matter of Ext.P-6/Anx.R-3(g) dated 16.3.2009, has been finally dropped and that the action of the Government in dropping all further objections in regard to the said alleged discrepancy for the amount of Rs.5,919/- is final and is not to be varied.

4. On this basis, the learned Addl. State Prosecutor submits that the balance amount that should be recovered from the petitioner comes to Rs.648/- (viz., Rs. 6567 - Rs. 5919 = Rs. 648) in addition to Rs. 1350/- and Rs. 2325/- referred to in para 3 of the aforestated statement dated 27.11.2015 of the 3rd respondent. Thus, it is pointed out by the learned Addl. State Prosecutor that the total amount that should be recovered from the petitioner is

Rs.4323/- only (Rs. 648 + Rs. 1350 + Rs. 2325)

5. It has been held by the Apex Court in Anil Kumar's case supra that where a jurisdiction is exercised on a complaint filed in terms of Sec.156(3) or Sec.200 of Cr.P.C., the Magistrate is required to apply in mind, in such a case, the Special Judge/Magistrate cannot refer the matter under S.156(3) for investigation against a public servant without a valid sanction order and further that the application of mind by the learned Special judge/Magistrate concerned should be reflected in the order and that the mere statement that he has gone through the complaint, documents and heard the complainant as stated in the order, will not be sufficient, etc. In the instant case it is not in dispute that such a sanction order as contemplated in the aforestated ruling of the Apex Court was not obtained before the learned Special Judge had directed conduct of the investigation as per the impugned Ext.P-2 order, which led to the registration of the impugned crime as per Ext.P-3 FIR.

6. However, it is submitted by the learned Addl. State Prosecutor that though the official respondents have a specific case that the ratio decidendi of the two-judge ruling of the Apex Court in Anil Kumar's case reported in (2013) 10 SCC 705 goes contrary

to the legal principle laid down by the five previous larger Bench decisions of the Apex Court in R.R.Chari v. State of U.P, reported in AIR 1951 SC 207 (para Nos.9 & 10– 3 Judges); Gopal Das Sindhi v. State of Assam, reported in AIR 1961 SC 986 [para 7– 3 Judges]; Jamuna Singh & Ors. v. Bhadai Shah, reported in AIR 1964 SC 1541 [pars 8, 10 & 11– 3 Judges]; Devarapalli Lakshminayarana Reddy v. V.Narayana Reddy, reported in (1976) 3 SCC 252 = AIR 1976 SC 1672 [para 18 & 19– 3 Judges]; Matajog Dobey v. H.C.Bhari and Ors. reported in AIR 1956 SC 44 [para 20– 5 Judges], etc., this Court need not decide finally on the merits of the rival contentions raised in this matter, if the petitioner is voluntarily prepared to agree for recovery of the above said amount of Rs. 4323/-.

7. Sri.C.E.Unnikrishnan, learned counsel appearing for the petitioner submits that the impugned orders are liable to be quashed in view of the legal principles laid down by the Apex Court in Anil Kumar's case *supra* and further that a mere perusal of the proceedings in this case would clearly indicate that the petitioner has been unnecessarily harassed for conducting certain training programmes, which is only in connection with the discharge of his official duties, and further that since he has already retired on

30.4.2015, the petitioner also wants to give a quietus to these disputes, as he wants to lead a peaceful retired life. It is submitted by the learned counsel for the petitioner, on instructions, that the petitioner is also willing to undertake that the aforestated alleged discrepancy amount of Rs.4,323/- may be recovered from his Death Cum Retirement Gratuity (DCRG) and that the matter need not be decided on merits as pointed out by the learned Addl. State Prosecutor.

8. In view of these aspects, this Court is of the considered opinion that the aforestated submissions of the petitioner and the official respondents are indeed fair and reasonable. Accordingly, without going into the merits of the matter and without casting any stigma on the petitioner, the aforestated undertaking of the petitioner is recorded that he has no objections in the Department recovering the aforestated amount of Rs.4323/- (rupees four thousand three hundred and twenty three only) from his gratuity amounts. The competent authority/pension sanctioning authority will be at liberty to ensure that immediate steps are taken to recover the aforestated amount of Rs.4,323/- from the DCRG of the petitioner. It is further made clear that in view of the fact that the

official respondents themselves have decided only to recover the aforestated amount, no further adverse action either by way of criminal or departmental proceedings or pension withholding proceedings will further lie against the petitioner on account of the present impugned allegations. The competent authority/pension sanctioning authority concerned will ensure that as the petitioner has already retired from service on 30.4.2015, expeditious and efficient steps are taken to ensure that the admissible pensionary benefits of the petitioner, including gratuity, are settled without any further delay and in accordance with law, as early as possible. The petitioner will produce a certified copy of this judgment before the competent authority/pension sanctioning authority for immediate necessary action for the compliance.

With these observations and directions, the Writ Petition (Civil) stands disposed of.

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Sd/-
ALEXANDER THOMAS, JUDGE

P.S. To Judge.

