

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

WP(C).No. 31634 of 2011 (D)

PETITIONER(S) :

1. **P.M.SOMACHUDAN, S/O.P.M.A.NAMBOODIRI,
AREA MARKETING MANAGER, (RETAIL) KERALA BPCL, KOCHI
RESIDING AT FLAT NO.9B, SKYLINE LAVENDER, PETTA
THRIPUNITHURA, KOCHI - 682 301.**
2. **DAX MOHAN, S/O.CAPT.M.J.MOHAN,
WORKING AS AREA MANAGER (INDUSTRIAL)
BHARAT PETROLEUM CORPORATION LTD, GOA, AND
RESIDING AT 2B, SKY - LINE HOME STAY, CHACKOLA
COLONY ROAD, PERUMANOOR, THEVARA
KOCHI - 682 015.**

**BY ADVS.SRI.S.SREEKUMAR (SR.)
SRI.P.PRIJITH
SRI.P.MARTIN JOSE
SRI.ANEESH JAMES**

RESPONDENT(S) :

1. **CENTRAL BUREAU OF INVESTIGATION (CBI)
REPRESENTED BY SUPERINTENDENT OF POLICE, SPE/CBI
KATHRIKADAVU, COCHIN - 682 017.**
2. **THE CHAIRMAN & MANAGING DIRECTOR,
BHARAT PETROLEUM CORPORATION LTD, BHARAT BHAVAN, 4 & 6
CURRIMBHOG ROAD, BALLARD ESTATE, MUMBAI - 400 001.**
3. **THE DIRECTOR (MARKETING)
BHARAT PETROLEUM CORPORATION LTD, BHARAT BHAVAN, 4 & 6
CURRIMBHOG ROAD, BALLARD ESTATE, MUMBAI - 400 001.**

**R1 BY ADV. SRI.P.CHANDRASEKHARA PILLAI, C.B.I.
BY SRI.E.K.NANDAKUMAR, SC
R2 & R3 BY SRI.BENNY P. THOMAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03-06-2015, ALONG WITH W.P.(C) NO.31665/2011 THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

AMV

: 2 :

WP(C).No. 31634 of 2011 (D)

APPENDIX

PETITIONER(S) EXHIBITS :

- EXT.P-1** COPY OF ORDER DATED 07.10.2010 ISSUED BY THE 3RD
RESPONDENT SANCTIONING AUTHORITY.
- EXT.P-2** COPY OF LETTER DATED 25-10-2010 ISSUED BY THE CHIEF
VIGILANCE OFFICER BEFORE THE SANCTIONING AUTHORITY.
- EXT.P-3** COPY OF LETTER DATED 27.10.2010 ISSUED BY THE 3RD
RESPONDENT SANCTIONING AUTHORITY TO CVO
- EXT.P-4** COPY OF LETTER DATED 02.05.2011 SUBMITTED BY THE
CHIEF VIGILANCE OFFICER TO THE SANCTIONING AUTHORITY.
- EXT.P-5** COPY OF ORDER DATED 25.05.2011 ISSUED BY THE 3RD
RESPONDENT SANCTIONING AUTHORITY.
- EXT.P-6** COPY OF ORDER IN R.C.1(A)/2009 ISSUED BY THE 3RD
RESPONDENT SANCTIONING AUTHORITY.
- EXT.P-7** COPY OF ORDER IN R.C.1(A)/2009 ISSUED BY THE 3RD
RESPONDENT SANCTIONING AUTHORITY.

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

AMV

ALEXANDER THOMAS, J.

W.P.(C) Nos.31634 & 31665 of 2011

Dated this the 3rd day of June, 2015

JUDGMENT

The facts projected in W.P.(C) No.31665 of 2011 are as follows; the 1st respondent/Central Bureau of Investigation (CBI) had registered crime No.R.C.3(A)/2009/CBI/SPE.Kochi for the offences alleged under Sections 120B and 420 of the Indian Penal Code and Sections 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988.

2. It was alleged that accused Nos.1 to 6 who were named in the FIR entered into a conspiracy by the 6th accused obtained undue pecuniary advantage to the tune of Rs.3 Crores in the purchase of High Speed Diesel (HSD). During the course of investigation accused Nos.7 to 14 were arraigned of which petitioners herein, who are working in the BPCL are accused Nos.9, 13 and 14 respectively. The accused Nos.1, 2 and 7 to 14 including the petitioners are officers of the respondent BPCL. The 1st respondent CBI sought consent of 3rd respondent/the Director, Marketing, BPCL, to prosecute accused Nos.1, 2, 7 to 14 including the petitioners. Though, the 3rd respondent by Ext.P2 order dated 07.10.2010 had

refused the said sanction for prosecution of the accused Nos.1, 2, 7 to 14 including the petitioners, in terms of the provisions under Section 19(1) of the Prevention of Corruption Act. Again the Central Vigilance Commissioner had requested the 3rd respondent to grant sanction to prosecute again the petitioners herein, which the 3rd respondent had refused by Ext.P5 order dated 02.05.2011. It is the case of the petitioners that due to the unlawful intervention of the 1st respondent and the Central Vigilance Commissioner, the official respondent Nos.2 and 3 had granted sanction to prosecute the petitioners by Exts.P7 to P9 impugned orders, which are under challenge in this petition.

3. The facts projected in connected W.P.(C) No.31634 of 2011 are as follows; the 1st respondent/CBI had registered No.R.C.1(A)/2009/SPE/CBI for offences alleged under Section120B read with Section 420 of IPC and Sections 7, 12 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. It was alleged therein that the 1st accused in furtherance of the conspiracy with other accused had obtained pecuniary advantage in the purchase of HSD. It was further alleged that the petitioners had obtained illegal gratification. Accused Nos.5 to 9 and 11 and 12 are the officers of BPCL wherein the two petitioners herein are accused Nos.5 and 8. Though, the

1st respondent/CBI had sought sanction to prosecution of accused Nos.5 to 9 and 11 and 12, which was refused as per Ext.P1 order dated 07.10.2010, again the 1st respondent sought sanction against the petitioners alone which was also refused as per Ext.P5 order dated 25.05.2011. the petitioner further alleges that due to the alleged unlawful intervention from the part of the 1st respondent CBI and Chief Vigilance Commissioner, the respondent Nos.2 and 3 had issued Exts.P6 and P7 orders granting sanction to prosecute the petitioners. It is contended that impugned Exts.P6 and P7 are illegal and without jurisdiction. With the background of these aspects, the petitioners herein have been filed these writ petitions to quash the above said impugned Exts.P6 and P7 proceedings.

4. Heard Sri.S.Sreekumar, the learned senior counsel instructed by Sri.P.Martin Jose, learned counsel appearing for the writ petitioners in this case, Sri.P.Chandrasekhara Pillai, the learned standing counsel for the 1st respondent/CBI and Sri.Benny P.Thomas, the learned standing counsel for the respondent Nos.2 and 3.

5. On a consideration of the facts and circumstances of these cases, it is seen that these writ petitions were instituted as early as on 25.11.2011. The main matter is now pending

before the Sessions Court concerned notified under the provisions of Prevention of Corruption Act dealing with cases in which the CBI is the prosecution agency. It is pointed out that the final report/charge sheet has been filed for these cases and that the Special court concerned has taken cognizance pursuant to the impugned grant of sanction and the matters have been duly numbered as calendar cases. As the cognizance has already been taken by the court below based on the impugned grant of sanction, this Court is of the considered opinion that to project the interest on both sides, that it is not necessary to adjudicate by this Court in these proceedings to decide on the legality or otherwise of the impugned grant of sanction. Moreover the Apex Court in CBI v. Asok Kumar Agarwal [AIR 2014 SC 827] has held more particularly in paragraph 47 thereof that undoubtedly that the stage of examination the validity should be examined during the stage of trial. In these cases, what is under challenge is the legality of the grant of sanction after the earlier refusal to grant sanction by the sanctioning authority. At this juncture the learned senior counsel appearing for the petitioners submits that the petitioners intent to move proper application for discharging these accused before the court below on the

ground that the impugned orders granting sanction are vitiated etc. This Court is not called upon to decide on such pleas and it is open to the parties concerned to work out their appropriate remedies in accordance with the provisions of the governing statutes in accordance with law.

With these observations these writ petitions are closed accordingly.

sd/-
ALEXANDER THOMAS
JUDGE

AMV/08/06/