

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 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

WP(C).No. 34871 of 2015 (S)

PETITIONER:

**ALL KERALA ANTI-CORRUPTION AND
HUMAN RIGHTS PROTECTION COUNCIL,
ZAMZAM COMPLEX, METTUPALAYAM STREET, PALAKKAD,
REPRESENTED BY ITS PRESIDENT ISACC VARGHESE.**

BY ADV. SRI.MANSOOR.B.H.

RESPONDENTS:

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF HOME AFFAIRS, SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695001.**
- 2. DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM, PIN-695001.**
- 3. DIRECTOR OF VIGILANCE,
VIGILANCE AND ANTI CORRUPTION BUREAU,
THIRUVANANTHAPURAM, PIN-695033.**
- 4. THE SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI CORRUPTION BUREAU, SIU-1, POOJAPURA,
THIRUVANANTHAPURAM, PIN-695033.**
- 5. DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI CORRUPTION BUREAU,
ERNAKULAM UNIT.**
- 6. THE SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI CORRUPTION BUREAU, CENTRAL RANGE,
ERNAKULAM.**

BY SPECIAL GOVERNMENT PLEADER SRI.TOM. K.JOSE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1:- TRUE COPY OF THE JUDGMENT IN DATED 3-8-2015 IN WPC 2272/2015.**
- EXHIBIT P2:- TRUE COPY OF THE FINAL REPORT IN VC 06/14/SIU-1 SUBMITTED BY THE FOURTH RESPONDENT BEFORE THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM.**
- EXHIBIT P3:- TRUE COPY OF THE JUDGMENT DTD 9/11/2015 IN OPCR 376/2015**
- EXHIBIT P4:- TRUE COPY OF THE 164 STATEMENT MADE BY THE WITNESS NO 1 , SRI BIJU RAMESH RECORDED BY THE JFCM 11, THIRUVANANTHAPURAM ALONG WITH ITS ENGLISH TRANSLATION**
- EXHIBIT P5:- TRUE COPY OF THE PRELIMINARY ENQUIRY REPORT DTD 6/6/2015 BEARING NO PRE/1/2015/EKM**
- EXHIBIT P6:- TRUE COPY OF THE COMMUNICATION DTD 6/6/2015 BEARING NO PRE/1/2015/EKM**
- EXHIBIT P7:- TRUE COPY OF THE CIRCULAR NO 10/2008 DTD 5/9/2008 ISSUED BY THE 3RD RESPONDENT**
- EXHIBIT P8:- TRUE COPY OF THE GO(P)NO 29/8/VIG DTD 16/8/2008 ISSUED BY THE GOVT.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ASHOK BHUSHAN, CJ

&

A.M.SHAFFIQUE, J.

W.P.C.No.34871 of 2015

Dated this the 7th day of December 2015

J U D G M E N T

Ashok Bhushan, J

Heard learned counsel for the petitioner.

2. This writ petition is filed by the petitioner seeking for the following relief:

“To call for the records leading to exhibit P5 and quash the same by issuing a writ of certiorari and direct the fourth respondent to conduct a detailed enquiry/investigation into the contents of Ext.P4 along with further investigation in V.C. 6/2014/SIU-1 under the direct supervision of third respondent.”

3. From the facts brought on record, it does appear that the investigation was conducted and report was submitted. The Enquiry Commissioner and Special Judge passed an order for further investigation on 29/10/2015. O.P.(CrI.) No.376/2015 was filed by the Vigilance and Anti Corruption Bureau challenging the said order. The learned Single Judge, by judgment dated 09/11/2015, has disposed of the writ petition. The learned Single

Judge, by the said judgment, did not accept the prayer of the petitioner in the original petition to quash the order for further investigation. Certain observations were also made by the learned Single Judge in the last paragraph of the judgment, which is extracted below:

“In the result, this Original Petition is disposed of with the aforesaid directions. The observations made by the court below against the Director of Vigilance that he has no power to give timely directions to the investigating officer, are expunged. It is made clear that the Director of Vigilance has got sufficient power and authority by exercising his powers under paragraph 72(1) of the Vigilance Manual read with Section 158(2) Cr.P.C., to give timely directions in the matter of investigation, and not after that. The Director of Vigilance ought to have exercised the powers under Section 173(3) Cr.P.C in this case, in the absence of which the court below is perfectly justified in ordering a further investigation under Section 173(8) Cr.P.C.”

4. The petitioner, who was one of the party respondents in the original petition, has now come up in this writ petition seeking for the relief, as noted above. Petitioner prays for

quashing Ext.P5 order, that is a preliminary enquiry report. The report has already been up for consideration by the Enquiry Commissioner and Special Judge. It is submitted by the learned counsel for the petitioner that the said preliminary enquiry report has not been placed before the Enquiry Commissioner and Special Judge. Hence the petitioner seeks a direction to the 4th respondent to conduct a detailed enquiry and investigation in the contents of Ext.P4, which is a statement recorded under Section 164 Cr.P.C. As noted above, the Enquiry Commissioner and Special Judge, having already directed for holding further investigation on 29/10/2015, which order has not been interfered with by the learned Single Judge in O.P.(CrI) No.376/2015, and further investigation is yet to take place as directed by the learned Single Judge, it is not necessary for this Court to entertain this public interest litigation and issue any direction, as prayed for. When all the necessary steps, as per the Code of Criminal Procedure has to be exhausted, if the petitioner has any grievance, it is at liberty to file appropriate application before the Enquiry Commissioner and Special Judge, Thiruvananthapuram for necessary directions.

We are of the view that this writ petition need not be entertained as a public interest litigation and accordingly, we close this writ petition.

(sd/-)

(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

True Copy

PA to Judge

jsr/07/12/2015