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Sri. Benny. P. Thomas.

SC - Malabar Cements Ltd.

BEFORE THE HONOURABLE HIGH COURT OF KERALA
AT ERNAKULAM

W P(C) No.27365/2016

Shaji T Balan

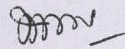
: Petitioner

Vs.

Malabar Cements Ltd and others

: Respondents

**MEMO SUBMITTED BY THE GOVERNMENT PLEADER TO PRODUCE
THE REPORT SUBMITTED BY SUPERINTENDENT OF POLICE, VACB,
CENTRAL RANGE, ERNAKULAM.**



**M R SABU
SENIOR GOVERNMENT PLEADER**

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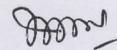
Malabar Cements Ltd and others

: Respondents

**MEMO SUBMITTED BY THE GOVERNMENT PLEADER TO PRODUCE
THE REPORT SUBMITTED BY SUPERINTENDENT OF POLICE, VACB,
CENTRAL RANGE, ERNAKULAM.**

It is submitted that this Hon'ble Court, vide order dated 07.09.2016, had directed the 5th respondent to submit a report in the above case. The report submitted by the Superintendent of Police, Vigilance & Anti-Corruption Bureau, Central Range, Ernakulam on behalf of the 5th respondent is produced herewith as directed. It is humbly prayed that this Hon'ble Court may be pleased to accept the same on records.

Dated this the day of October, 2016.



**M R SABU
SENIOR GOVERNMENT PLEADER**

BEFORE THE HONOURABLE HIGH COURT OF KERALA, ERNAKULAM

WP(C) No. 27365 of 2016

Shaji T. Balan

: Petitioner

Vs

Malabar Cements Ltd, Walayar, Palakkad
representing its Managing Director & others

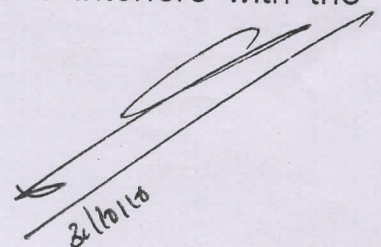
: Respondents

**REPORT SUBMITTED BY THE SUPERINTENDENT OF POLICE, VACB,
CENTRAL RANGE, ERNAKULAM ON BEHALF OF 5th RESPONDENT.**

Para I: Introduction

It is humbly submitted that as instructed by the 5th Respondent, I am entrusted with a direction to conduct enquiry on the Hon'ble High Court Order dated 7th September 2016 against the Writ Petition filed by Sri. Shaji.T.Balan, Asst. Sales officer, Malabar Cements Ltd., Walayar.

The Hon'ble High Court has ordered as in para 9, " Accordingly, it is ordered that the 5th respondent (Director, VACB, TVPM) of VACB should ensure that competent and high ranking officer of the VACB, not below the rank of Superintendent of Police conducts enquiry in to the matters specifically raised by the Petitioner (Sri. Shaji.T.Balan) and more particularly, should ascertain and report before this court as to whether the action taken by the respondent company as per Expt.P8 as well as subsequently as per Expt.P20 will have direct or at least significant impact of influencing or impeding the course of vigilance enquiry ordered Expt.P-7 and Expt. P-18 respectively. The said vigilance investigation officer should carefully enquire and assess these aspects not only from the petitioner but from the several witnesses cited by the VACB, who are the officials of the company and find out whether the said actions in Expt.- P8 and Expt-20 respectively were the specific intent of influencing or intimidating witnesses in the course of vigilance enquiry/investigation. So also the allegations raised against the petitioner in Expt.-P20 which led to the impugned suspension should also be inquired into and examined by that vigilance officer as to whether the reinstatement of the petitioner will have the effect of allowing the petitioner to interfere with the



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proposed inquiry against him as per the impugned proceedings. The allegations raised in Expt-P8 and other relevant aspect also be inquired into by the above said Vigilance Officer in the inquiry to be conducted as directed above”.

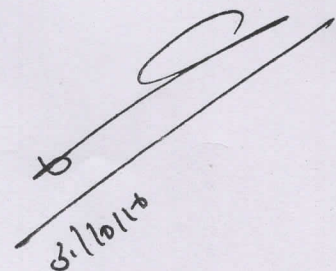
Para II Allegation in Brief:

Sri.Shaji.T.Balan, Asst. Sales Officer, Malabar Cements Ltd., had filed a Writ Petition Civil No. 27365/2016 (U) before the Hon'ble High Court of Kerala on 14.08.2016 against the Show cause with Suspension Order No. MDo/2-02/2016/3782 dated 09.08.2016 of Managing Director, Malabar Cements Ltd., Walayar, Palakkad on the charges allegation that Sri. Shaji.T.Balan, Asst. Sales Officer was responsible for the collection of Market Intelligence reports during 2012 and asked to submit the reports to the Deputy Manager (CPC) for analysis, regarding the price and fluctuation in the market with competitive brands. He is also responsible for advising on price fixation and cement sales at Palakkad District by Malabar Cements Ltd., Subsequently he was re-designated as Marketing Officer and substantial drop of sales of price in Palakkad were noticed and Shaji.T.Balan was removed from the sales function in Palakkad etc., .

The petitioner Sri.Shaji.T.Balan had prayed for relief on the following matters in the WPC 27365/2016:

- i. Declare that the suspension order as per Expt. P20 is illegal and unsustainable and vitiated malafides and ulterior motives to prevent enquiry evidenced by Expt. P18
- ii. Issue a writ certiorari or any other appropriate writ, order or directing calling for Expt-P9 and Expt.P20 and quash the same
- iii. Issue a writ of mandamus or any other appropriate writ order or direction directing the respondents 1 and 2 to re-instate the Petitioner in service as Marketing Manager forthwith will all consequential benefits available or revocation of Expt.P20.etc.

During the course of my enquiry on the Hon'ble High Court Order dated 7.09.2016, I questioned the following witnesses and perused the documents mentioned hereunder and the enquiry reveals the followings.


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Para III: Witnesses questioned/examined

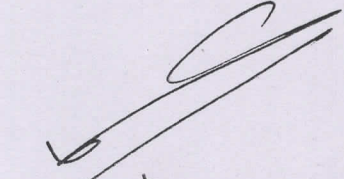
1. Sri. Shaji.T.Balan, Asst. Sales Officer, Malabar Cements Ltd., Walayar, Palakkad (Under Suspension).
2. Sri. I. Muhammed Sulaiman, Asst. Manager (P&A), Malabar Cements Ltd., Walayar, Palakkad (Under Suspension).

Para IV: Documents Perused and returned.

1. **Exhibit A:** Personal File maintained by the Personnel Department of Malabar Cements Ltd in r/o Sri. Shaji.T.Balan, Asst. Sales Officer, Malabar Cements Ltd.,
2. **Exhibit A1:** Enquiry Filed maintained by the Personnel Department of Malabar Cements Ltd., in r/o Sri. Shaji.T.Balan, Asst. Sales Officer, Malabar Cements Ltd.,
3. **Exhibit B:** CD File in VC 14/16/PKD maintained by the Inspector of Police-1, VACB, Palakkad.
4. **Exhibit B1:** CD File in VC 13/16/PKD maintained by the Inspector of Police-1, VACB, Palakkad
5. **Exhibit B2:** CD File in VC 15/16/PKD maintained by the Inspector of Police-1, VACB, Palakkad
6. **Exhibit B3:** CD File in VC 16/16/PKD maintained by the Inspector of Police-1, VACB, Palakkad
7. **Exhibit B4:** CD File in VC 17/16/PKD maintained by the Inspector of Police-1, VACB, Palakkad
8. **Exhibit C:** Copy of the statement of facts submitted by the petitioner Sri. Shaji.T.Balan, Asst. Sales Officer, Malabar Cements Ltd., containing 9 sheets.
9. **Exhibit C1:** Copy of documents filed by Sri. I.Mohammed Sulaiman, Asst. Manager (P&A) Malabar Cements before the Supdt. of Police, VACB, CR Kochi.
10. **Exhibit D:** Copy of Staff Regulation of Malabar Cements Ltd., Walayar, Palakkad containing 6 sheets.

Para V: Discussion of Evidence


1. Sri. Shaji. T.Balan entered into the service of Malabar Cements Ltd., Walayar, Palakkad (a Public Sector Undertakings wholly owned by the Govt. of Kerala) herein after referred as "Company" as a Clerical Staff. Later he was promoted as Asst. Sales Officer and re-designated as


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Marketing Officer (intelligence) and posted at the Marketing Department of the Company (Exhibit A). He was placed under suspension from the service as per the Show Cause cum Suspension Pending Enquiry No. PA-1/PF-561/2014 dated 27.3.2014 on the charges of misconducts in the Printing of Payment Diaries for Malabar Cements Ltd., as per the Staff Regulation Clause 12 (c) (h) (p) and (s). A Domestic Enquiry was conducted by a Committee headed by the Deputy Finance Manager, Malabar Cements Ltd., and submitted report. The Domestic Enquiry reveals as Sri. Shaji.T.Balan has no role in the Printing, distribution and collection of Payment Diaries. He was to compile all the orders received from the dealers and forward to the Party. The Enquiry Committee could not find out any direction from either from the Diary Printing Committee or from the Management entrusting Sri. Shaji. T.Balan to take the role of coordinator for Printing of Payment Diaries (pages 279 to 285 of Exhibit A1).


Based on the report, Shri.Shaji.T.Balan was exonerated from the charges raised against him vide No. PA-1/PF-561/2014 dated 27.3.2014. He was re-instated into service 10.05.2014. Thereafter a Charge Memo was served to Sri. Shaji.T.Balan on 16.6.2014 and a Domestic Enquiry was ordered by the Managing Director of Malabar Cements Ltd., by appointing Sri. Lashminarayanan, Advocate as the Enquiry Officer. The Domestic Enquiry officer had conducted an enquiry and filed his report on 30th October 2014 and the finding of the enquiry reports read as "The Management is not able to prove any charge leveled against the employee. At the most it can be presumed that the dairy committee ought to have taken permission from the superiors in respect of printing additional diaries for dealers separately. It has to be noted that the diary committee members who are superior officers of Shaji.T.Balan has taken orders from various dealers and has forwarded them. If there was no sanction from the higher authorities, it can be viewed only as a procedural latches. Because the custom prevailed in the company is that there is practice of printing diaries for dealers on payment basis. I find that the management has failed to prove the charges leveled against the employee Sri. Shaji.T.Balan in the enquiry"(pages 433 to 447 of Exhibit A-1).

2. Subsequently Sri. Shaji.T.Balan (petitioner) was asked to report before the Vigilance Officer vide letter No. QV 29/15/PKD dated 22.06.2015 on 29.06.2015 as a witness in connection with the QV

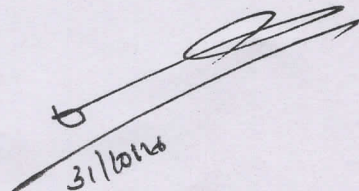

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29/15/PKD which was conducted during the period from June to July 2015 at VACB, Palakkad. On 27.06.2015, the Managing Director of the Company has ordered another de novo Enquiry against Sri. Shaji. T.Balan, petitioner, by rejecting the Enquiry Report submitted by the Adv. Sri. Lakshminarayanan on the Diary Printing payment matters in which Sri.Shaji.T Balan was exonerated. This was due to the vengeance against the petitioner on his proposed hearing at the Vigilance on the QV. 29/2015/PKD, alleging large scale corruption in the Marketing Department of the Company and pointing towards the Managing Director K.Padmakumar and the Deputy Marketing Manager G.Venugopal. He was questioned and recorded his statement in the Quick Verification on the allegation of irregularities in the Marketing Functions of Malabar Cements Ltd., during 2014-15 which resulted huge loss Rs.2.70 crores in the awarding of large scale commissions by allotting of cements to particular dealers of Malappuram, Kozhikkode, Thrissur and Ernakulam District.

3. Sri. Shaji.T.Balan had filed a Writ Petition Civil No. 21214/2015 dated 30.5.2015 before the Hon'ble High Court praying to quash the de novo enquiry ordered by the Managing Director and also the disciplinary action against Shaji.T.Balan. It is revealed from records and statements that the Writ petition (Civil) No. 21214/2015 is pending at the Hon'ble High Court of Kerala. The petitioner was again summoned in connection with the verification conducted by the Vigilance & Anti-Corruption Bureau, Palakkad on the complaint preferred by the Managing Director, Malabar Cements Ltd., vide letter 1) No.MDo/3-40/2015 dt.19-11-2015 2) No. PA-1/AD 36/2015 28-11-2015 3) No.MDo/3-41/2015 dated 29-11-2015).
4. Lastly on 6.8.2016, through a letter No. VC 13,14,15,16/16/PKD addressed to the Deputy General Manager (P&A) of the Company, the petitioner and other 13 officials of the Company were asked to report before the investigation officer of the newly registered Vigilance Cases No. 13/16/PKD, 14/16/PKD, 15/16/PKD and 16/16/PKD from 9.8.2016 to 20.09.2016 and the petitioner turn was fixed on 16.8.2016 to depose about the irregularities in the allotment of cement to a particular dealers of Malappuram, Kozhikkode, Ernakulam and Thrissur Districts and the irregularities in the agreement by the Company for engaging Kerala State Warehousing Corporation to store and handling of Cements at their various godowns within the State (Exhibit B to B4).

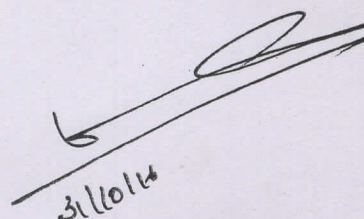

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5. On 09.08.2016, Sri.Shaji.T.Balan was placed under suspension on the charges of failure in discharging the roles intended as an officer in charge of Marketing Intelligence functions and that of Officer responsible to ensure the growth in sales and a possible higher net realization from Palakkad. The facts and figures made in the show cause with suspension order is also confusing and misleading. It is also revealed from the enquiry that the short fall in realization of Palakkad during 2013-14 per bag, figured as Rs.4.46 never match with the realization figures. Moreover, the petitioner Shaji.T.Balan, as Asst. Sales Officer was in charge of Marketing Intelligence Officer from January 2012 and he was replaced from the post from 25.2.2013 and G.Venugopal, Deputy Marketing Manager was placed in the charge of Marketing Intelligence of Palakkad District. Later on 21st August 2013, Sri. Shaji. T.Balan was relieved from the sales activities of Palakkad District vide Order No. PA-1/PER-13/2013. So it is very clear that the allegations raised against the petitioner in the Show cause with Suspension order were not substantiated with evidence and the action taken by the Managing Director was with *malafide* intention trying to victimize the petitioner with unwarranted charges.
6. Prior to the above, the Hon'ble High Court of Kerala has ordered on 8.07.2016 to register FIRs against the Suspected Officers in QV 29/201/5/PKD on the allegations of irregularities in the invoking of Bank Guarantee of Rs.50 Lakhs and allotment of Cement to particular dealers of certain districts which resulted in the loss of Rs.2.70 Crores in RP No. 560/2016 of WPC 4932 of 2016 filed by Sri. Joy Kaitharath (Exhibit B and B1).
7. As ordered by the Hon'ble High Court of Kerala, 2 FIRs were registered on 9 07.2016 at VACB, Palakkad as 1) VC 13/16/PKD U/s. 13 (1) (c) (d) r/w 13 (2) of Prevention of Corruption Act 1988 and Sec. 409, 420, 120B IPC against 1) Prakash Joseph, Legal Officer, Malabar Cements Ltd., 2) M.Sundaramoorthy, former Managing Director, MCL 3) V.M.Radhakrishnan, 4) S.Vadivelu (both are representing M/s.ARK Wood & Metals Pvt., Ltd., Supplier of Dry Fly Ash). 2) VC 14/16/PKD U/s. 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act 1988 and Sec. 409, 120B IPC against 1) K.Padmakumar, Managing Director, 2) G.Venugopal, Deputy Manager Marketing of Malabar Cements Ltd., In connection with the


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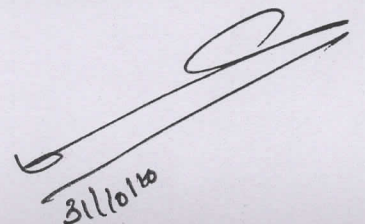
investigation of the case, the petitioner Sri. Shaji.T.Balan, Asst. Sales Officer and Sri. I.MuhammedSulaiman Asst. Manager (P&A) of the Company were summoned on 9.08.2016,10.08.2016& 16.08.2016 (Page Exhibit B to B4) .

8. The Managing Director of the company immediately after issuing the Suspension orders to the Petitioner and another official Sri. Muhammed Sulaiman, gave wide publicity in the Print Media about the suspensions.
9. Sri. I. Muhammed Sulaiman, Asst. Manager (P&A) was placed under suspension w.e.f. 6.8.2016, when the letter No. 13/16,14/16,15/16,16/16/PKD were sent to the Deputy General Manager (P&A), with intention to restrain the official from giving statements to the Vigilance authority regarding the allegation of invoking Bank Guarantee of Rs. 50 Lakhs, in which the Legal Officer Prakash Joseph figured as accused No.1. Sri. I Muhammed Sulaiman, Asst. Manager (P&A) was the presenting officer, authorized by the Managing Director of the Company, in the Domestic Enquiry Conducted during 2013 to 2015 against the Legal Officer Prakash Joseph as per the direction of Director Board of the Company in the 193rd Board meeting held on 29.06.2013.
10. The 193rd Board meeting discussed serious deficiencies in legal matters and change of charge. The Managing Director informed the Board based on Government direction vide G.o.No.133651H212010/ID dt.27.12.2011 to take action against certain officers citing certain irregularities. The role performed by Sri.Prakash Joseph, Legal Officer in dealing with commercial matters was not at all satisfactory. The legal matters were entrusted to a Committee consisting of Senior Officers. Sri.Prakash Joseph was posted at Sales Office, Thrissur. On further enquiry, serious lapses committed by Prakash Joseph, Legal Officer in matters relating to M/s.ARK Wood & Metals Ltd., M/s. Maria Cements, M/s.Crescent Mines & Minerals were noted. Sri.Prakash Joseph tried to settle the cases in favour of M/s.Crescent Mines & Minerals. The Managing Director informed the Board further that certain confidential information has been passed on to M/s.Crescent Mines & Minerals under the Right to Information Act, 2005 by Sri.V.A.MohammedAsheraf, Manager (Marketing) and this was against the interest of MCL. Later, citing this, a proposal was moved for an out of court settlement. After discussions, the following resolutions were passed: "The Board authorized the Managing Director to take stringent disciplinary action against the lapses by officers in litigations for and


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against MCL. It is also accord sanction to entrust all legal matters of the company to Sri.N.srinivasan, Dy.General Manager (P & A) who is Law Graduate, in place of Sri.Prakash Joseph, Legal Officer. It is also resolved as Sri.I.MohammedSulaiman, Personnel Officer will assist Sri.N.Srinivasan, DGM (P & A) for works in connection with all legal matters of the Company with immediate”.

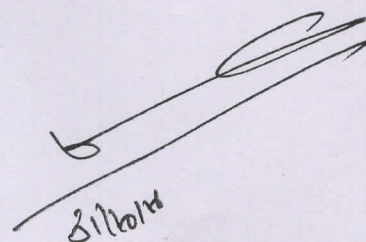
11. As authorized by the Board, Sri. Muhammed Sulaiman, Asst. Manager (P&A) had assisted the then Deputy General Manager (P&A) of the Company in all legal matters and acted as the presenting officer in the Domestic Enquiry conducted against Prakash Joseph by Sri. Mohammed Hashim, High Court Advocate. As the presenting officer, he arranged the management witnesses and collected/marked the documents relating to the invoking of Bank Guarantee. The charges leveled against Prakash Joseph, Legal Officer was undoubtedly proven by the Enquiry Officer and found guilty in the Enquiry Report filed on 20.5.2015. On same date, Sri. Mohammed Sulaiman, was placed under suspension on charges of transgressing the Board decisions. He was re-instated on 10th June 2015 and ordered Enquiry against charges of allegations. He was posted at the mines of the Company from 10.6.2015.
12. On 28.5.2016, another Explanation note dated PA-1/PF-492/2016 was served to Muhammed Sulaiman, Asst. Manager (P&A) regarding the non-initiation of legal action against the transporters of Lime stone purchased by the Company during 2013. He had asked to provide documents related to the contract with the transporters but the Management had not supplied the entire documents in time. Sri. Muhammed Sulaiman, Asst. Manager requested through E-Mail on 4th June 2016 for providing the documents. In this matter, Sri. Muhammed Sulaiman was preferred a WPC 19177/2016 against the enquiry ordered on the charge of transgressing the Board decision and the same is pending before the Hon'ble High Court of Kerala.
13. On the eve of the letter addressed to the DGM (P&A) of the Company, directing the 14 officials to report before the IO in VCs 13,14,15,16/16/PKD, the Managing Director vide ref. No. PA-1/PF-492/2016 dated 6th August 2016 suspended Sri. Muhammed Sulaiman, Asst. manager (P&A) on charges that the filing of cases against M/s. Raja Transports was delayed considerably, the legal action against the defaulters was delayed and wrong legal advice was given to the Finance



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Department on 19.8.2014 to recover liquidated damages also from the defaulting party. The Managing Director also alleges against Muhammed Sulaiman as "the reason for the lapse for not getting the legal opinion from M/s. Menon & Pai Advocates before expiry of the Contract period.

14. When Sri. Muhammed Sulaiman was questioned, he stated that as per the Board resolution, he was only assigned the duty of assisting the then Deputy General Manager (P&A) for all the legal matters of the Company. Hence the charges leveled against are not substantiated with evidence and that it was only to restrain the officials from giving statements before the Investigation Officer. Sri. Muhammed Sulaiman also stated that the Managing Director had suspended him for protecting Prakash Joseph in the Vigilance Case No. 13/16/PKD. The charges against the legal Officer was proven without doubt in the Domestic Enquiry conducted by the High Court Advocate Sri. Muhammed Hashim.
15. The Sub Committee of the Director of Board of the Company filed a report on the pricing policy of the Company placed in the 206th Board meeting held on 22.3.2016, which approved the recommendations of the Committee for implementation by the Marketing Development Committee of MCL. The Board also resolved that the incentive structure is to be reviewed and re-formulated, if required, during the first quarter of 2016-17, after evaluation of gains in profitability and discount sales volume elasticity in 2015-16 also.
16. The Sub Committee of the Board made recommendations and the vital among those are discussed hereunder.
 1. During 2013-14, after factoring a transportation cost of Rs.20/- there is a difference of Rs.25/- per bag on net realization between Palakkad and other districts. This has increased to Rs.34 during 2014-15, it was explained that the rationalization of prices in Palakkad district during 2014-15 had given additional net realization of Rs.9/- per bag.
 2. The Sub Committee of the Board also observes that MCL is not getting the correct margin in some districts out side Palakkad, particularly in the Ernakulam District.
 3. The additional profit earned during 2014-15 of Rs.1083.14 lakhs, Rs.4.95 crores is because of the pricing strategy adopted during the period and the balance is due to CEMENT PRICE increase in the last quarter of 2014-15. The additional gain company received by restructuring volume discounts scheme may be utilized to introduce promotional scheme and


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other incentives to customers as being done by the other Cement Companies.


17. The Sub Committee Report and the Board Agenda does not indicate any loss due to the price difference compared with 2013-14 and 2014-15 (which are explained in para- 5 (1 to 3). Sri. Padma Kumar is the Managing Director of the Company since 2011 and for the irregularities in the Marketing Department, he himself is the person primarily responsible, since he took over the charge of the Marketing department in the year 2012. He is the Pricing/sales committee Chairman by which the new pricing policy was introduced from the 1st April 2014.

Para V.Conclusion:

The Enquiry conducted reveals the petitioner Sri. Shaji.T.Balan did not have any role in fixing of price for cement as it is a policy decision taken by the Managing Director and Senior level officers of the Company. The petitioner is only a Junior level officer, who is responsible to obey the orders of the officers he report to. Also it is true that the petitioner has been summoned by the Vigilance as Witness in VC 14/16/PKD and 16/16/PKD involving a monetary loss of nearly Rs. 5 Crore rupees in which the Managing Director and the Deputy Marketing Manager has been arrayed as Accused No.1 and Accused No.2, respectively.

For the charge alleged against the Petitioner in the Suspension Order (Expt.P20), the actual officers who are liable to be suspended are the Managing Director (Accused in VCs 14/16/PKD, 15/16/PKD, 16/16/PKD and 17/16/PKD) and the Deputy Manager Marketing (VCs 14/16/PKD and 16/16/PKD) of the Company since they are the decision making authorities in the Marketing Department. The petitioner is only a junior level officer discharging his duties as per their instructions.

It is also revealed that all the policy decisions are taken by the Managing Director of Company and the Board of Directors and not by the petitioner. The petitioner cannot furnish any false data to the Management since the Marketing Department is headed by the Managing Director and Deputy Manager Marketing and they have direct access with the dealers and the market to cross check the figures furnished by the junior level officers including the petitioner.


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The Petitioner has been victimized by the Managing Director, by placing him under suspension as per Exbt.P20, with the mal intention of coming out of the Vigilance Case registered against the Managing Director K.Padmakumar and Deputy Manager Marketing G.Venugopal for the irregularity committed by them involving a loss of Rs.2.70 Crores. So also Sri. Muhammed Sulaiman, Asst. Manager (P&A) was also victimized by the Managing Director to restrain him from deposing against Prakash Joseph, Legal Officer of the Company who is also arrayed as an accused in VC 13/16/PKD.

Dated this the 31st day of October 2016.



31/10/16

Narayanan T. IPS
Superintendent of Police,
Vigilance & Anti-Corruption
Bureau, Central Range,
Ernakulam.