

BEFORE THE HON'BLE LOK-AYUKTA

Complaint No: 638/17D

Complainant : Sri.Joy kaitharath

Respondent : Sri.Paul Antony IAS & others

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Dated this the day of June 2017

BEFORE THE HONOURABLE KERALA LOK AYUKTA

THIRUVANANTHAPURAM

IN COMPLAINT NO 638/17D

BETWEEN

COMPLAINANT : Joy Kaitharath

AND

RESPONDENTS : Paul Antony & Others

STATEMENT OF FACTS FILE BY THE FIRST RESPONDENT

All the allegations and averments made in the complaint, except those which are specifically admitted or otherwise dealt with hereunder, are false and hence denied.

The complaint is not maintainable either in law or on facts.

It is submitted that Shri K. Padmakumar, Secretary, RIAB was given additional charge of Malabar Cements Ltd vide GO(Rt)No.1225/2011/ID dated 1.10.2011. During his tenure in Malabar Cements Ltd from 1st October 2011 till 5th September 2016, Malabar Cements Ltd recorded high sales turnover and made profits as under:

Sales Turnover and Profits of Malabar Cements Ltd in Rs crores						
	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17 (Provisional)
Sales Turnover	231.59	228.08	203.12	261.78	338.8	226
Net Profit Before Tax	50.81	45.26	9.88	19.87	39.06	3



But since he was divested charge of the company, Malabar Cements Ltd has made losses of Rs.19.01 crores from 1st October 2016 to 31st March 2017. The company was able to report profits for the full year 2016-17 of Rs.3 crores only on the basis of the profits made by the company under the stewardship of Shri K. Padmakumar from 1st April 2016 till 5th September 2016. Even so, Malabar Cements Ltd's profits at Rs.3 crores in 2016-17 was a steep fall from Rs.39.06 crores in 2015-16.

Malabar Cements Ltd continues to under-perform in 2017-18. It sold only 81,218 MT cement from 1st April 2017 till 31st May 2017 as against 1,26,969 MT cement in the same period in the previous year.

It is this officer with this enviable track record that the complainant tries so hard to discredit.

The disruption in management in Malabar Cements Ltd caused by the arrest of this top-performing officer on 5th September 2016 led to stoppage of production activity in Malabar Cements Ltd for a few months, and consequent loss of market and market share.

Kerala cement market typically offers higher prices per bag of cement than that of neighbouring States, and the loss of market by Malabar Cements Ltd has only helped private sector cement companies to raise prices.

Hence the very bonafides of the complainant are suspect. It is not clear what his motives in his spirited campaign against Shri Padmakumar are.

The para-wise remarks on the points raised by the complainant are given below.

Para 1 to 6, 8 to 10: No Comments.

Para 7: QV/29/2015/PKD was referred by the Director, VACB to Government in the Vigilance Department. Government thereupon informed the Director, VACB that the allegations did not warrant action. Exhibit R(1) Govt Lr No.11014/B1/2015/Vig dated 18.1.2016 of Vigilance (B) Dept. addressed to the Director, VACB states as follows:

"I am directed to invite your attention to the reference cited (your letter No.E9(QV29/2015/PKD) 13301/2015 dated 19.8.2015) and to inform you that a Vigilance enquiry may be conducted on the alleged invocation of Bank

Sanjay Antony

guarantee of Rs.50 lakhs from Canara Bank, Palakkad by M/s.ARK Woods & Metals Pvt. Ltd. As regards the allegation of fixation of price/allowing discount for the sale of cement, a transparent procedure is being followed and C&AG will any way be auditing that part. Hence, vigilance enquiry is not required in this regard."

Defying this direction, VACB registered VC13/16/PKD based on QV29/2015/PKD. Whereas Para 4 (ii) of GO(P)No.65/92/Vig dated 12.5.1992 Exhibit^{P₁}(2) states that

"The Vigilance Department should not initiate enquiries suo motu even when a complaint is made in person or in assigned petition. The Vigilance Department should invariably report such complaints promptly to Government in Vigilance Department which will issue necessary instructions in the matter".

Para 11 to 15: Government in the Industries Department received the recommendation of the Director, VACB through the Vigilance Department in Government only in December 2016 vide Govt.Lr.No.1321/B1/2016/Vig dated 17.12.2016 (Exhibit^{P₁}(3)) and Govt.Lr.No.9938/B1/2016/Vig dated 05.12.2016 (Exhibit^{P₁}(4)).

As may be seen from Exhibit^{P₁}(3) letter, the letter of the Director, VACB to Government in the Vigilance Department was dated 22.8.2016, but the Industries Department was informed by the Vigilance Department only through its letter dated 17.12.2016.

Similarly, Exhibit^{P₁}(4) letter shows that the letter of the Director, VACB to Government in the Vigilance Department was dated 31.08.2016, but the Industries Department was informed by the Vigilance Department only through its letter dated: 5.12.2016.

It is further submitted that the Industries Department has not been given any factual details of the cases by the VACB against Sri. Padmakumar.

In spite of that, the Industries Department had divested Sri. Padmakumar from the charge of MD, Malabar Cements Ltd (Exhibit^{P₁}(5)) vide G.O (Rt) 877/2016/ID dated 5.9.2016. Once divested from the charge on Managing Director of Malabar

Cements Ltd, Sri. Padmakumar was not in a position to interfere in the matters of the company or influence the course of events there.

The substantive post of Sri. Padmakumar was Secretary, RIAB. As he had not been charged with any actionable matter in the capacity as Secretary, RIAB by the VACB, there was no need to suspend Sri. Padmakumar from that charge.

The First Respondent considers Sri. Padmakumar to be an honest and efficient officer, as may be seen from his track record in Malabar Cements Ltd. As such, the First Respondent was duty bound to protect him.

Para 16,17: Sri. Padmakumar was placed under suspension from the post of Secretary RIAB vide GO(Rt) No.919/2016/ID dated 9.9.2016 (^{R₁}Exhibit 6) as per the orders of the Hon'ble Minister for Industries.

However, as the First Respondent was of the opinion that Sri. Padmakumar had not been charged by the VACB with any wrong doing in his capacity as Secretary, RIAB, the First Respondent intervened in the matter and got the order cancelled. Sri. Padmakumar was ordered to go on leave vide GO(Rt)No.993/2016/ID dated 29.09.2016 (^{R₁}Exhibit 7) and the opinion of the Law Department was sought on the course of action to be pursued in the matter.

Para 18 to 21: Sri. Padmakumar was suspended from the post of Secretary RIAB vide GO(Rt)No.71/2017/ID dated.12.1.2017 (^{R₁}Exhibit 8) with retrospective effect from 5.9.2016 under Rule 10(3) of the KCS (CC&A) Rules, 1960.

Para 22: It is submitted that the First Respondent was Chairman, of Cochin Port Trust, which is under the Ministry of Shipping, Government of India. Sri. Padmakumar, in his capacity as Managing Director of Malabar Cements Ltd., took due approvals from Government of Kerala. He also got the project appraised by a commercial bank which thereupon lent the company funds for putting up a cement import terminal in Cochin Port. This project was aimed to double the production and market share of Malabar Cements Ltd in the State's cement market.



Payments were made by Malabar Cements Ltd as per the terms and conditions of the Cochin Port Trust for getting allotment of land in the Port.

Such payments have not personally benefitted the First Respondent. As such the First Respondent denies the allegation that his defence of Sri. Padmakumar was motivated by his transactions with Cochin Port Trust. The First Respondent has defended Sri. Padmakumar only on the basis of his performance in Malabar Cements Ltd.

Para 23, 24: Sri.Padmakumar was suspended from the post of Secretary RIAB vide GO(Rt)No.71/2017/ID dated.12.01.2017 with retrospective effect from 5.9.2016 under Rule 10(3) of the KCS (CC&A) Rules, 1960.

As submitted earlier, the cases were registered by VACB without getting permission from Government in the Vigilance Department as stipulated under Para 4 (ii) of GO(P)No.65/92/Vig dated 12.05.1992.

Moreover, although VACB had made recommendations to Government in the Vigilance Department in August 2016 to suspend Sri. Padmakumar, the Industries Department received the recommendation of the Vigilance Department only in December 2016.

Para 25: It is submitted that the VACB and the Vigilance Department have not officially communicated a copy of the FIRs initiated against Sri. Padmakumar to the Industries Department till date.

Copy of the FIRs was obtained by the First Respondent subsequently from Malabar Cements Ltd.

Therefore, citing the reference of the FIR in GO(Rt)No.71/2017/ID dated 12.01.2017 is not evidence that a copy of the FIR was officially sent either by VACB or by Vigilance Department to the Industries Department.

Para 26 to 28: As submitted earlier, the First Respondent has only strived to safeguard a good officer who led Malabar Cements Ltd. creditably, leading it to



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profits year after year. The company has made losses every month since the arrest of Sri. Padmakumar. Even today the company has not recovered from the disruption of its top management. The profit of the company has fallen from Rs.39 crores in 2015-16 to Rs. 3 crores in 2016-17. The complainant should explain how the company could have made such profits if Sri. Padmakumar and his team of officers were so corrupt, as he tries to paint them. The motives of the complainant for having disrupted the working of Malabar Cements and his crusade against Sri.Padmakumar are not clear. It has only helped destroy the morale of the company and caused it to lose market share to private cements companies.

There is no dereliction of duty or maladministration from the part of the First Respondent.

Hence the complainant is not entitled to get any relief as prayed for.

In the above circumstances it is humbly submitted that the complaint is devoid of merits and accepting this statement, the complaint may be dismissed.

Date: 3rd June 2017



First Respondent

Additional Chief Secretary
Industries Department
Government of Kerala

All the facts stated above are true and correct to
the best of my knowledge, information and belief

First Respondent

Additional Chief Secretary
Industries Department
Government of Kerala