

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR. MOHAN M. SHANTANAGOUDAR  
&  
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 27TH DAY OF SEPTEMBER 2016/5TH ASWINA, 1938

WA.NO. 1513 OF 2016 () IN WP(C).4932/2016  
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AGAINST THE JUDGMENT IN WP(C) 4932/2016 DATED 18-07-2016

APPELLANT(S)/NOT A PARTY TO THE WRIT PETITION:  
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SRI. PADMAKUMAR  
S/O. LATE DR. P. KRISHNA NAIR,  
AGED 52, MANAGING DIRECTOR,  
MALABAR CEMENTS LTD, WALAYAR,  
PALAKKAD - 678 624, RESIDING AT IIF,  
SAMRUDHI, THAMPURANS, THAMPURAN JUNCTION,  
THIRUVANANTHAPURAM - 695 035.

BY ADVS. SRI. S. SREEKUMAR (SR.)  
SRI. P. MARTIN JOSE  
SRI. P. PRIJITH  
SRI. THOMAS P. KURUVILLA

RESPONDENT(S)/PETITIONER AND RESPONDENTS 1 TO 4:  
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1. SRI. JOY KAITHARATH  
GENERAL SECRETARY,  
STATE HUMAN RIGHTS PROTECTION CENTRE,  
VELLIKULANGARA, THRISSUR - 680 699.
2. THE STATE OF KERALA  
REPRESENTED BY SECRETARY,  
VIGILANCE DEPARTMENT,  
GOVERNMENT OF KERALA, SECRETARIAT,  
THIRUVANANTHAPURAM - 695 001.
3. THE DIRECTOR  
VIGILANCE & ANTO CORRUPTION BUREAU,  
VIKAS BHAVAN, THIRUVANANTHAPURAM - 695 001.
4. THE ADDITIONAL CHIEF SECRETARY  
INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA,  
THIRUVANANTHAPURAM - 695 001.
5. THE DEPUTY SUPERINTENDENT OF POLICE  
VIGILANCE & ANTI CORRUPTION BUREAU,  
PALAKKAD - 680 699.

R2 - 5 BY STATE ATTORNEY SRI. K. V. SOHAN  
R1 BY SRI. JOHN K. GEORGE

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 27-09-2016,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WA.NO. 1513 OF 2016

APPENDIX

PETITIONER'S EXHIBITS

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- ANNEXURE -A : TRUE COPY OF JUDGMENT IN W.P(C)NO.4932 OF 2016 DATED 8.6.2016 OF THIS HON'BLE COURT.
- ANNEXURE -B : TRUE COPY OF ORDER IN R.P.NO.560 OF 2016 IN W.P(C) . 4932/16 DTD.8.7.2016 OF THIS HON'BLE COURT.
- ANNEXURE -C : TRUE COPY OF NOTICE DATED 22.9.2008 BY THE LEGAL OFFICER, M/S. MALABAR CEMENTS LTD.
- ANNEXURE -D : TRUE COPY OF A LETTER DATED 22.9.2008 ISSUED BY M/S. MALABAR CEMENTS LTD. TO THE CANARA BANK, PALAKKAD.
- ANNEXURE -E : TRUE COPY OF NOTICE DATED 23.9.2008 ISSUED BY M/S. MALABAR CEMENTS LTD. TO THE CANARA BANK, PALAKKAD.
- ANNEXURE -F : TRUE COPY OF NOTICE DATED 1.1.2009 SUBMITTED BY SRI. PRAKASH JOSEPH BEFORE THE THEN MANAGING DIRECTOR.
- ANNEXURE -G : TRUE COPY OF THE OPINION OF SR. M.K. DAMORARAN & ASSOCIATES, ADVOCATES, ERNAKULAN, DATED 10.7.2009 ABOUT THE MAINTAINABILITY OF THE APPEAL.
- ANNEXURE -H : TRUE COPY OF OPINION DATED 11.2.2012 OF THE RETAINER COUNSEL OF THE COMPANY
- ANNEXURE -I : TRUE COPY OF THE DIRECTION OF THE APPELLANT TO HANDOVER THE FILES TO SRI. E. MOIDEENKUTTY ON 14.3.2012.
- ANNEXURE -J : TRUE COPY OF RELEVANT PAGES OF THE FILE MOVEMENT REGISTER
- ANNEXURE -K : TRUE COPY OF NOTICE DATED 17.2.2012 PREPARED BY SRI. PRAKASH JOSEPH
- ANNEXURE -L : TRUE COPY OF PLAINT AS O.S. NO.26 OF 2016 FILED BEFORE THE PRINCIPAL DISTRICT COURT, THOOTHUKUDI.

RESPONDENTS' EXHIBITS

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NIL

/TRUE COPY/

P.A. TO JUDGE

sou.

**Mohan M. Shantanagoudar, CJ  
&  
Antony Dominic, J**

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W.A. No. 1513 of 2016  
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Dated this the 27<sup>th</sup> day of September, 2016

J U D G M E N T

Mohan M. Shantanagoudar, CJ

W.P(C). No.4932 of 2016 came to be filed by the first respondent herein seeking a direction to the second respondent to accord sanction for registering a vigilance case against the accused persons on the report of QV.29/15/PKD forthwith.

2. According to the complainant, many persons are involved in the crime relating to Malabar Cements Limited, which is a manufacturing unit in the Public Sector in the Kerala State. The complainant alleges that due to mismanagement and large scale corruption by the officials and outside contractors/agents, the company is now in the verge of collapse. The said writ petition came to be disposed of on 8.6.2016 noting that the FIR has been registered under Section 19 of the Prevention of Corruption Act. Having noticed that the investigation is going on, the learned Single Judge dismissed the writ petition as infructuous. Thereafter, a review petition came to be filed by

the complainant as R.P. No.560 of 2016, which was allowed on 8.7.2016 with a conclusion as under :

“12. In the result, this Review Petition stands allowed and the judgment passed by this Court on 8.6.2016 is hereby reviewed and recalled. The Writ Petition is restored to file. The Director of Vigilance shall forthwith take steps to register an FIR in the matter within a period of one week from today. If not, he will have to appear before this Court in person and to submit the 'legal position', if any, which overlooks the mandates laid down by the Hon'ble Supreme Court in **Lalitha Kumari (supra)** on 18.7.2016.

Post the Writ Petition on 18.7.2016.”

3. Pursuant to the order on Review Petition, proceedings in W.P.(C). No.4932 of 2016 came to be revived and ultimately disposed of on 18.7.2016 with an observation that the Court appreciates the swift action taken by the Director of the Vigilance and Anti Corruption Bureau (VACB) in complying with the order dated 8.7.2016 passed by the High Court. It is also observed that the investigation in the matter will be conducted vigilantly and diligently, as is expected from the VACB, that too expeditiously. The said order dated 18.7.2016 is called in question in this writ appeal.

4. Sri. S. Sreekumar, learned counsel appearing on behalf of one of the accused, who is stated to have been arrested and

released on bail, submits that the investigating officer is proceeding with the investigation unfairly, in as much as he is influenced by the observations made by this Court in W.P(C). No.4932 of 2016. He further submits that it is not open for the learned Single Judge to dispose of the writ petition and make repeated orders in the same writ petition/review petition without impleading the appellant as one of the respondents. Thus, according to him, the impugned orders of learned Single Judge are bad in the eye of law.

5. The submissions are rebutted by the learned counsel appearing on behalf of the first respondent as well as the State Attorney, who contended that the investigation is going on vigilantly and in all fairness. There cannot be any dispute that the Director of VACB, who is in charge of the investigation of the case, will have to investigate the matter with utmost fairness and in an intelligent manner. Investigation has to be proceeded with uninfluenced by any of the orders passed by the Court in as much as the court cannot substitute the place of investigating officer. Investigation will have to be conducted independently and based on materials on record and final report needs to be prepared as per law.

6. Be that as it may, since the investigation has already

been proceeded with, we deem it proper to dispose of the writ appeal with an observation that the investigating officer shall conduct the investigation impartially, without being influenced by any of the observations made by the learned Single Judge in W.P(C).No.4932 of 2016 and R.P.No.560 of 2016, vigilantly and intelligently. After due investigation as per law, the investigating report shall be submitted before the concerned court. The investigation shall be completed as expeditiously as possible.

With these observations, the writ appeal stands disposed of.

Sd/-  
Mohan M. Shantanagoudar,  
Chief Justice

Sd/-  
Antony Dominic,  
Judge

sou.27/9.