

By E-mail with Confirmation Copy by Registered Post with Ack. Due

5th February 2018

From K. Padmakumar
11F, Samrudhi Thampurans
Thampuramukku, Trvandrum - 695035

To
Shri. Sanjay M Kaul IAS
Secretary to Government, Industries (H) Department
Government Secretariat, Trivandrum – 695001.

Dear sir

Subject : Implementation of Court Orders in W.P (C) 23665 of 2017, Ultimatum to Join as Managing Director of KAL by 5th February 2018 and stoppage of even my Subsistence allowance that I had received following Suspension - Regarding

Reference :

1. File No. 11014//b1/2015/Vig
2. File1No. 321/b1/2016/Vig
3. File 322/H1/2016/ID on Exhibit P20 suspension order.
4. Letter No. 9938/b1/16/vig dated 5th December 2016
5. Letter No. 1321/b1/16/vig dated 17th December 2016
6. Judgement of the Hon. High Court in WP (C) 23665 of 2017 dated 7th December 2017
7. VIG - B2 /537/2017 - VIG (i) dated 7/12/2017 and related Government file
8. G.O (Rt) No. 1727 / 2017 / ID dated 28th December 2017 and related Government file
9. My letter dated 3rd January 2018 and e-mail addressed to Additional Chief Secretary (Industries & Commerce) with copy to the Chief Secretary requesting to implement the Judgement for my reinstatement
10. My Communication to Secretary – in Charghe, RIAB stating that my request referred to in (9) above is pending in Government
11. Letter No. IND-H1/50/2017-IND dated 2nd February 2018 and related Government file.
12. Government files pertaining to the Council decision of 2011 including File No. 25868/H1/2012/ID to regularise personnel taken on Contract from CMD as per Government directions
13. Government file related to UNDP Project on Public Sector Reforms(IND 96/004), Institutional Contract with CMD
14. Government files pertaing to Fly ash Contracts in MCL
15. Government files pertaing to CBI Investigation in KSCDC
16. Government files pertaing to CBI Investigation in SIDCO

With reference to the above subject and reference, kindly note the Calendar of Events since filing of WP (C) 23665 of 2017, which is as follows.

17th July 2017 – Date of 1st hearing in WP (C) 23665 of 2017 and Interim orders directing the respondents to file Counter on certain Exhibits.

7th December 2017- After 4 rounds of posting, the Hon'ble High Court directs the Additional Chief Secretary (Industries & Commerce Department) vide the Judgement referred as (6) above to take an affirmative decision on my Exhibit P22 application in the Writ Petition which is to reinstate me in my substantive position of Secretary, RIAB from which I was suspended from service. The Learned Counsel for the Government had the responsibility to hand over the Judgement to the specifically cited authority to issue posting orders within 20 days from the date of the High Court Judgement.

7th December 2017 – Vigilance Department in Government communicates vide the letter referred as (7) above to Industries Department not to place me in sensitive posts. No such verdict exists from either the Hon'ble High Court OR the Vigilance Court, Thrissur. The order dated 9th September 2016 of the Hon'ble Vigilance Court, Thrissur granting bail after my arrest in VC 14/2016/PKD does not have a condition barring me from working in my substantive post in my parent organisation, RIAB, which does not have subordinate organisations. This is not a post having any authority and is not a sensitive post involving business transactions. Secretary, RIAB reports to Chairman, RIAB and does analytical work.

28th December 2017 – Government order referred to as (8) above is issued directing me to Join as Managing Director of Kerala Automobiles Ltd (KAL) violating the High Court Judgement.

1st January 2018 – I received the posting order referred to as (8) above violating the Judgement of this Hon'ble Court in WP (C) 23665 of 2017, by Speed Post

3rd January 2018 – As mandated in the Judgement of the Hon'ble Supreme Court in Civil Appeal No. 5600 of 2006, I requested vide the letter referred as (9) above to the Additional Chief Secretary (Industries & Commerce Department) to implement the Judgement citing the technical and administrative defects in the Government order on my posting, by Registered Post with Acknowledgement due and e-mail.

4th January 2018 – The addressees acknowledges receipt of letter referred as (9) above from me.

29th January 2018 – I communicate vide letter referred to as (10) above to the Secretary-in Charge, RIAB that my request citing the problems in the posting order is pending in Government. Executive – Administration in RIAB acknowledges receipt.

31st January 2018 – RIAB. my parent organisation which was paying my subsistence allowance stops even my subsistence allowance for January 2018 after intimating the pendency of my request to the Secretary, RIAB in Charge. This is illegal as I was denied through the Letter referred to as (8) above to work in line with the High Court Judgement. I did not abstain from assuming charge of Secretary, RIAB which is my substantive post.

3rd February 2018 – I receives the communication referred as (11) above by hand delivery and by e-mail to join as Managing Director, KAL by 5th February 2018. As there is no mention of my request dated 3rd January 2018 received by e-mail on the same day itself and received by Registered Post on 4th January 2018 to implement the High Court orders. A copy was also sent to the Chief Secretary.

My request dated 3rd January 2018 referred as (9) above, based on a High Court Judgement, may not be considered as insubordination OR Challenging of a Government order. May I also inform that I have moved the High Court to facilitate implementation of the Judgement referred (6) above. Needless to say, a Government order violating Court Orders does not prevail over a High Court Judgement.

As my request dated 3rd January 2018 to kindly take steps to implement the Judgement does not figure in the Ultimatum given to me onto join as MD of KAL by 5th February 2018, the following points are brought to your kind notice.

1. The allegation against me, in letter referred (11) above, is not correct as Managing Director of Travancore Titanium Projects still holds charge of MD of Kerala Automobiles Ltd. In the PSUs under the Industries Department, Metal Industries Ltd, Travancore Cements Ltd, Sitharam Textiles Ltd, Trivandrum Spinning Mills Ltd and Malappuram Co-operative Spinning Mills have Managing Directors holding full additional charge. All these companies are making losses like Kerala Automobiles Ltd. In fact during, 2015-16, I was holding additional charge of MD of MCL (from 2011) and SIDCO (for nearly one year) and MCL was making huge profits and a combined turnover of more than Rs. 700 Crores contrary to what is happening now.
2. Losses in Kerala Automobiles is not a phenomenon consequent to my request to Government to implement Court Directions. KAL has been making huge losses for more than 10 years in spite of cash loss funding from the Government amounting to more than Rs. 25 crores. Now there is an attempt to put the blame of this eventuality on me for requesting to implement High Court Orders.
3. The posting order from Government mentions about a communication referred to as (7) above stating that I should not be posted in a sensitive

post. No such submission was made before this Hon'ble Court either by the Industries (H) Department or by the Vigilance Department during the pendency of the Writ Petition related to the Judgement referred (6) above OR later on before issue of the Government order referred to as (8) above.

4. My posting as Managing Director of Kerala Automobiles Ltd, is in a sensitive position that involves transactions involving Crores of Rupees and implementation of a new project. **I fear that this posting without an application for deputation is clearly to harm me further by ousting me from my substantive post.** While my basic job in RIAB was to prepare analytical reports on performance of all PSUs under the Industries Department including Kerala Automobiles Ltd, submit to Chairman, RIAB and review the performance of Companies and Managing Directors, I am being penalised by posting as the Managing Director of a Category D company after ousting me from my substantive post.
5. Even for a posting on Deputation, an application is to be submitted by me and if it is accepted, the Government Order has to be comprehensive on the appointment terms, period, remuneration and fringe benefits as is ordered by the Finance Department Government with such specific details. It is not correct to lower the status of the Officer without conducting a legally tenable detailed Enquiry and award of Punishment. **The Posting order issued vide reference (8) above without implementation of the Judgement will put me in further serious trouble of losing my job in spite of illegal registration of FIRs in Malabar Cements Ltd, violating the Vigilance Manual and Court orders on procedure to conduct vigilance enquiries.** Now after the Government issued an order to stop such illegal actions at lower levels by VACB, a direction has also been given by the Director, VACB that in the event of a suspected Cognizable Offence after a preliminary enquiry to be done as per the Apex Court Judgement in Lalitha Kumari (Supra), FIR can be registered without naming the suspects. Later on, the list of accused can be put after a detailed investigation.
6. **Posting the Petitioner as Managing Director of a Public Sector Undertaking without adopting a transparent procedure and a logical completion of the Vigilance Investigations in my case, will set a bad precedence in Public Sector Governance. This will also have serious implications for the Appointing Authority, as had happened earlier. My duty in RIAB was also to advice on Policy Formulation and Policy Management and I think that I should do so in spite of the fact that I am suspended from my substantive post.**
7. The Government order on my posting as Managing Director of Kerala Automobiles Ltd referred to as (8) above ignores the meaning of the word "re-instate" in the Judgement referred to as (6) above and the contents

of Exhibit P22 application in my Writ Petition. The posting order is silent about the fact that my substantive post is as Secretary, RIAB and that I was suspended from this post.

8. The posting order referred to as (8) above, does not also disclose that I am not part of the Government Service in Kerala (Secretariat or Various Departments) or a Managing Director appointed directly by the Government in PSUs based on my application following any advertisement. I did not request for a posting even as Managing Director of Malabar Cements Ltd at any point of time. In 2011, I was posted there on full additional charge only from my substantive post as Secretary of RIAB.
9. I am the only employee on regular rolls of RIAB and with 22 years' experience in RIAB and with specific International Fellowship training for this Analytical Work at the instance of the Government under the UNDP Project on Public Sector Reforms (IND 96/004). It is submitted that other personnel working in RIAB, which is my parent organisation, are on "extension until further orders".
10. After stoppage of an Institutional Contract with the Centre for Management Development (CMD) for placing support staff in RIAB based on Government directions, I had insisted for scrutiny of credentials of staff in RIAB to prevent any illegal regularisation and enhancement of their pay without any assessment of their track record as a fake qualification claim after a poor academic track record was also identified. A decision was taken in the 35th Board meeting of RIAB held on 31st August 2016 to facilitate this. But on 5th September 2016, I was illegally arrested and suspended. What has happened through the posting order referred (8) above, violating the Judgement of the Hon'ble High Court is the ouster of the only permanent employee with professional credentials who held a legitimate substantive post in his parent organisation as Secretary, RIAB.
11. It is submitted that I was being harassed for implementing systems for e-procurement, e-payment and scientific pricing at the instance of the Government to ensure transparency in Purchase and Sales functions in PSUs. I had submitted report for a detailed investigation in SIDCO and Kerala State Cashew Development Corporation. Illegal contracts for more than Rs. 1000 crores were cancelled by me when I served as the Managing Director in SIDCO and Malabar Cements Ltd. In SIDCO, 500 employees engaged illegally were not allowed to continue. This resulted in enmity from many. The cases pertaining to these organisations are under investigation by the CBI. It is respectfully submitted that even the registration of VC 14/2016/PKD which led to my illegal arrest by VACB and suspension is illegal as it is clearly stated in the Legal position regarding the related QV 29/2015/PKD. It is explained by the Additional Director (Prosecution) and also by the then Directors of VACB that there is no cognizable

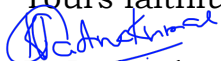
offence and that the complaint was because of sending a notice to recover huge sums from a Private supplier.

12. Now I am being punished by removing from my substantive post without a Charge sheet and Trial. Other officers named in the FIRs registered in Malabar Cements Ltd have not even been suspended from their substantive posts and are continuing in the Company. This clearly shows that the purpose of illegal coercive steps against me was to oust me from Malabar Cements after making a profit of Rs. 189 Crores from Operations during 2011-16, till my arrest.
13. I had intimated about my request to Government referred to as (10) above to implement the Court orders to the Secretary –in Charge, RIAB vide letter referred to as (10) above. Executive (Administration) in RIAB had acknowledged this. But RIAB has not paid my subsistence allowance, leave alone my salary, after stopping my subsistence allowance by 31st December 2018.
14. I do not have money to meet even my medical bills amounting to around Rs. 1000/day consequent to diabetes, angioplasty and amputation of my left big toe]. The medical record citing my health condition can be seen in Exhibit P24 in my Writ Petition W.P 23665 of 2017. My eye surgery for Retinopathy is scheduled for February 2018 and I do not have sufficient money to carry out this due to stoppage of my subsistence allowance, leave alone my salary based on High Court orders for reinstatement.
15. I am suffering for want of money to meet my day to day expenses of my family including my aged in-laws. My savings is low as I had constructed a house. The Banks would move for property attachment in the event of default if there is a default of one more EMI payment. My mother had expired on 17th January 2017 because of the grief consequent to my illegal arrest, harassment and suspension. **I was denied the Right to Work with Dignity from the date of registration of FIRS (9th July 2016). When I requested for implementing the Judgement, I am being denied the Right to Live by stopping even my subsistence allowance.**
16. Secretary, RIAB – in Charge may kindly be directed to release my Salary from January 2018, considering the serious stage that I am in that too as a result of carrying my duties sincerely and honestly.
17. Right from the Quick Verifications conducted in MCL on baseless allegations since 2014, initiation of multiple files in on the same subject has been the heinous approach adopted by the Industries (H) section and Vigilance (b) section to harm me conspiring with detractors and offenders in MCL, SIDCO, KSCDC and RIAB.

18. The illegality behind the coercive steps against me at lower levels in the Industries (H) Department and Vigilance (b) department can be understood from perusal of the files cited as reference. **The then Additional Chief Secretary (Industries & Commerce), the Law Secretary and the then Chief Secretary had stated that my arrest was illegal and the move for suspension was not recommended, in Exhibit 17 of the Writ Petition.** Please also refer to the submission made by the then Additional Chief Secretary (Industries & Commerce) before the Lok Ayuktha, in a case filed by Joy Kaitharath.
19. It is certain that the Joint Secretary, Under Secretary, Section Officer and Assistant of Industries (H) Department who are the custodians of files or noting referred above in this letter are also well aware of the contents in WP (C) 23665 of 2017, the interim order on the date of its admission, the Judgement referred (6) above and my request to implement Court orders referred (10) above. They have the responsibility of facilitating a legally valid and well informed decision corroborating the contents of related files.

A detailed investigation may be initiated to identify the persons responsible for the conspiracy against me. CBI is investigating the case related to the sad demise of Shri. Saseendran and his two sons in 2011. After the harassment of Shri. Saseendran and his ouster from Malabar Cements Ltd, a request was made by him to the then Hon'ble Chief Minister. There was no action from the Government level on this request. Investigations on the conspiracy against me may kindly be referred to the CBI by the Government adding it as an Additional Terms of Reference to the CBI investigation under way in MCL, KSCDC and SIDCO.

Thanking you
Yours faithfully


K. Padmakumar

Copy to: The Chairman, RIAB