

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 8TH DAY OF JULY 2016/17TH ASHADHA, 1938

RP.No. 560 of 2016 (N) IN WP(C).4932/2016  
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AGAINST THE ORDER/JUDGMENT IN WP(C) 4932/2016 of HIGH COURT OF KERALA

REVIEW PETITIONER(S):  
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JOY KAITHARATH  
GENERAL SECRETARY,  
STATE HUMAN RIGHTS PROTECTION CENTRE,  
VELLIKULANGARA, THRISSUR-680 699.

BY ADV. SRI.JOHN K.GEORGE

RESPONDENT(S)/RESPONDENTS:  
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1. STATE OF KERALA  
REPRESENTED BY THE SECRETARY, VIGILANCE DEPARTMENT.  
GOVERNMENT OF KERALA, SECRETARIAT,  
THIRUVANANTHAPURAM-695 001.
2. THE DIRECTOR,  
VIGILANCE & ANTI CORRUPTION BUREAU,  
VIKAS BHAVAN, THIRUVANANTHAPURAM-695 001.
3. THE ADDITIONAL CHIEF SECRETARY,  
INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA,  
THIRUVANANTHAPURAM 695 001.
4. THE DEPUTY SUPERINTENDENT OF POLICE  
VIGILANCE & ANTI CORRUPTION BUREAU,  
PALAKKAD 680 699.

BY GOVERNMENT PLEADER

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON  
08-07-2016, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**B. KEMAL PASHA, J.**

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Review Petition No. 560 of 2016  
in W.P.(C) No. 4932 of 2016  
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Dated this the 8<sup>th</sup> day of July, 2016

**ORDER**

Read judgment dated 08.06.2016 passed by this Court.

2. Last time, the learned Public Prosecutor on instructions submitted that sanction was accorded by the Government and consequently an FIR was registered in the matter. At that time, this Court had made it clear through the aforesaid judgment that when cognizable offences were revealed in Ext.P1 complaint and also in the quick verification, the VACB need not have waited for any sanction for registering the FIR. Sanction is only for the purpose of taking cognizance of the offence and not for any other

purpose. When it was submitted that FIR had already been registered, the matter was closed by treating it as infructuous.

3. Judgment dated 08.06.2016 passed by this Court has to be reviewed and recalled on the basis of statement dated 07.07.2016 filed by the Inspector of Police, VACB, Palakkad. The Inspector has reported that quick verification was conducted against the suspected persons namely, Sri. Prakash Joseph, Legal Officer, Malabr Cements Ltd., Sri.M. Sundaramoorthy, former Managing Director, MCL, V.M. Radhakrishnan, Managing Director M/s Ark Wood & Metal Pvt. Ltd., and S. Vadivelu, former Executive Director, M/s Ark Wood & Metal Pvt. Ltd. It has also been reported that the role allegedly played by the Chairman of the Malabar Cements as well as the Marketing Manager was also scrutinized. It has been reported that serious financial irregularities to the tune of ₹2.70 crores were detected and cognizable offences of criminal misconduct, criminal breach

of trust and criminal conspiracy were 'proved' against the suspected persons and the Chairman and Marketing Manager.

4. It has been further reported that the quick verification conducted against Sri.K. Padmakumar, the present Managing Director and Sri.G. Venugopal, Deputy Marketing Manager, Malabar Cements has also revealed serious criminal misconducts, criminal breach of trust, criminal conspiracy, criminal misappropriation etc.

5. The learned Public Prosecutor has pointed out that the Inspector who conducted the quick verification has filed a factual report before the Director of Vigilance. The Director of Vigilance has instead of directing the registration of the FIR, slept over the matter, and sent a report to the Additional Chief Secretary, Government of Kerala. On getting the report and on seeing the political clout of the accused, has cleverly ordered Vigilance enquiry in the allegation against one of the accused alone, to be

conducted by the Director of Vigilance. Presently, without registering any crime, the so-called vigilance enquiry against one among the accused, relating to one of the allegations alone is allegedly going on.

6. It has been reported that even a vigilance enquiry has been ordered only with regard to the bank guarantee in respect of ₹50 lakhs in which one Prakash Joseph alone was allegedly involved.

7. This is a case wherein the Vigilance Director has clearly flouted the mandatory directions given by the Apex Court in ***Lalitha Kumari v. Government of U.P. and others*** (2014(2) SCC 1). It is the mandate of the Hon'ble Supreme Court that when the complaint reveals cognizable offences, the investigating officer is duty bound to register the crime and to register an FIR. Here, quick verification was conducted in the matter and in the quick verification, it has clearly come out that cognizable offences of serious nature including criminal misconduct, criminal breach of trust,

criminal conspiracy, criminal misappropriation etc. have come to light. In fact, the Inspector, who conducted the quick verification, has reported that the said serious criminal offences have been “proved” against the said suspected persons. Even then, he has not chosen to register the FIR. Of course, as per the Vigilance Manual, he has sought for the permission of the Director of Vigilance.

8. The Director of Vigilance, by noting down the political clout of the persons involved, has considered them as above law and has decided to address the Additional Chief Secretary to the Government of Kerala in the matter. The Additional Chief Secretary to Government of Kerala has chosen to exonerate all the other persons, except Prakash Joseph, by stating that it is the duty of the Comptroller and Auditor General to note down the irregularities, if any, in the matter and therefore, any further action was not required against them. Who is he to decide so?

9. This is a case wherein apparently the Director of

Vigilance as well as the Additional Chief Secretary of the State are stooping before the accused, who are being considered as more equals. It is not clear whether it is as per the directives of the Government. That cannot be expected from the Government as well as the Director of Vigilance and the Additional Chief Secretary of the State. The Director of Vigilance was sleeping over the files unnecessarily and finally, he wanted to wash his hands by addressing the Additional Chief Secretary. This is not the way in which the matter ought to have been treated by the Director of Vigilance, and the Government.

10. When considering the attitude adopted by the Director of Vigilance and the Additional Chief Secretary, in the matter, there is everything to suspect the interference of the higher-ups in the matter. The right to good governance is a fundamental right coming within the ambit of Article 21 of the Constitution of India. That is now being denied by the VACB, the Governmental agency, to the citizens of this

country, through their irresponsible way of doing things as described above. This Court, if remains as a mute spectator to this, it will be a burial to the criminal justice dispensing system. This is not the way in which a governmental agency has to treat corruption cases of serious nature. All are equals before law, and nobody should be treated as 'more equals'.

11. It has been pointed out by the learned counsel for the petitioner that simply because of the involvement of one V.M. Radhakrishnan, who has much political clout in the matter, the petitioner is not expecting justice from the hands of the Government. This Court has to step in when justice is being hampered and is attempted to be buried like this.

12. In the result, this Review Petition stands allowed and the judgment passed by this Court on 08.06.2016 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



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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 18.07.2016.

Post the Writ Petition on 18.07.2016.

Sd/- **B. KEMAL PASHA, JUDGE.**

ul/-

// True copy //

P.S. to Judge.