CNR : KLHC010076412026

2026:KER:86394

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. SOUMEN SEN

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THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2026/20TH KARTHIKA, 1948

WP(PIL) NO. 23 OF 2026

PETITIONER

ANILKUMAR P., AGED 47 YEARS
MELATH HOUSE, BALAL PANCHAYAT, PARAPPA POST, KASARGOD DISTRICT PRESENTLY WORKING AS MANAGING DIRECTOR, FIREBIRD DISTRIBUTION FZE, DUBAI, UAE, PIN - 671533

BY ADVS. SMT.SHERLY MOL THOMAS
SMT.ANITHA MENON
SHRI.SREEVALSAN K.M.
SMT.ANJALY REJI
SHRI.P.K.RAMKUMAR

RESPONDENTS

1 **STATE OF KERALA**
REPRESENTED BY THE CHIEF SECRETARY IN HIS CAPACITY AS A MEMBER OF THE BOARD OF DIRECTORS OF KERALA INFRASTRUCTURE INVESTMENT FUND WHO GOVERNS KIIFB, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001

2 THE CHIEF EXECUTIVE OFFICER
KERALA INFRASTRUCTURE INVESTMENT FUND BOARD
(KIIFB), 2ND FLOOR, FELICITY SQUARE, STATUE,
THIRUVANANTHAPURAM, PIN - 695001

3 THE MANAGING DIRECTOR
KIFCON PVT. LTD. 7TH FLOOR, FELICITY SQUARE, M.G.
ROAD, THIRUVANANTHAPURAM, PIN - 695001

4 THE COMPTROLLER & AUDITOR GENERAL OF INDIA
POCKET-9, DEEN DAYAL UPADHYAYA MARG, NEW DELHI,
PIN - 110124

BY ADVS. GOVERNMENT PLEADER
SHRI.S.CHANDRASEKHARAN NAIR, SC, KIIFB
SRI.S.CHANDRASEKHARAN NAIR
SMT.T.K.SREEKALA, SC, INDIAN AUDIT AND ACCOUNTS DEPARTMENT
SHRI.C.E.UNNIKRISHNAN SPL. G.P TO A.G
SHRI.S.JAYANT
SMT.ABHIREMYA RAJ R B
SHRI.GOVIND V.P.
ABHILASH.B
SHRI.K.JAJU BABU, ADVOCATE GENERAL
SMT.R.REMA, SPL.GP TO AG

THIS WRIT PETITION (PUBLIC INTEREST LITIGATION) HAVING COME UP FOR ADMISSION ON 11.11.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 11th day of November 2026

SOUMEN SEN, C.J.

Heard Ms.Sherley Mol Thomas, the learned counsel for the petitioner, Mr.K.Jaju Babu, the learned Advocate General assisted by Ms.R.Rema, Special Government Pleader , Mr.S.Chandrasekharan Nair, the learned Standing Counsel for respondent Nos.2 and 3, Ms.T.K.Sreekala, the learned counsel for respondent No.4.

2. This Public Interest Litigation has been filed, inter alia, seeking a direction upon the Comptroller and Auditor General of India to conduct a full statutory audit and certification of accounts of KIIFB, including its balance sheet, receipts, expenditure, borrowings, guarantees, and off-budget liabilities, in exercise of powers under Articles 148, 149 and 151 of the Constitution of India read with the relevant provisions of the Comptroller and Auditor General's (Duties,

Powers and Conditions of Service) Act, 1971, (for short, C&AG (DPC) Act).

3. In the writ petition, it is alleged that the guarantees to the KIIFB by the State Government against borrowings have bypassed the borrowing limits set by the Central Government under Article 293(3), effectively creating "Off-Budget Borrowings" that threaten the State's fiscal stability, attracting the discipline of Article 293 of the Constitution and mandatory C&AG oversight. It is further alleged that KIFCON Private Limited, being a wholly-owned subsidiary of KIIFB at inception and substantially funded by it, fall within the definition of a "Government Company" under Section 2(45) of the Companies Act, 2013. The exclusion of KIIFB and its subsidiary KIIFCON from the purview of the Comptroller and Auditor General of India's powers violates the statutory scheme mandated by Sections 19 and 20 of the C&AG (DPC) Act. The petitioner further alleges that the Chief Executive Officer of KIIFB is also a

Director of KIIFCON, causing serious conflict of interest, enabling influence over project consultancy awards, amounting to arbitrary exercise of power and gross misuse of public funds.

4. KIIFCON has filed a counter affidavit denying the allegations. It is contended that KIIFCON, being a company registered under the Companies Act, the statutory auditors are being appointed by the Comptroller and Auditor General of India, and supplementary test audits are being carried out every year. Audits till the financial year 2024-25 are completed. The accounts are duly audited by the C&AG, and the audited accounts are regularly filed before the Registrar of Companies. The aspersions cast by the petitioner to the contrary are baseless and appear to have been made with malafide intent to cast unwarranted doubt upon the credibility and transparency of KIIFCON. It has also been stated that the information submitted as regards KIIFCON is erroneous and the allegations are baseless.

5. However, in the counter affidavit filed by KIIFB, it is stated that KIIFB is subjected to audit conducted by C&AG under Section 14(1) of the C&AG(DPC) Act. Under Section 14(1) of the said Act, the C&AG is empowered to audit all receipts and expenditures of any body or authority that is substantially financed by grants or loans from the Consolidated Fund of India or by a State or Union Territory with a Legislative Assembly. It is categorically stated that the allegations of the petitioner that the 2nd respondent is resisting audit under Section 20(2), which pertains to statutory audit of accounts, is entirely baseless and in justification thereof, averments have been made in paragraph No. 8 of the said affidavit. It is further stated that KIIFB is not a company registered under the Companies Act, 2013. It is a body corporate constituted under Section 4 of the Kerala Infrastructure Investment Fund Act, 1999, and is a statutory authority and not a company incorporated under the Companies Act. Hence, the provisions of the Companies Act

relating to appointment of statutory auditors and audit by the C&AG applicable to companies do not apply to KIIFB. The petitioner's attempt to bring KIIFB within the ambit of the Companies Act audit framework is legally untenable and misconcieved.

6. It is further alleged that the Public Interest Litigation encroaches upon matters that fall squarely within the domain of the executive and the legislature under the Kerala Infrastructure Investment Fund Act, 1999, read with the C&AG(DPC) Act. The issues raised therein pertain to statutory provisions and administrative functions governed by the said enactments and therefore, the present Public Interest Litigation is not maintainable.

7. The Comptroller and Auditor General of India, the 4th respondent, has filed a detailed affidavit, in which, it has been clearly stated that KIIFB is a statutory body and is wholly controlled by the Government of Kerala under the Kerala

Infrastructure Investment Fund Act to manage the Kerala Infrastructure Investment Fund with the objective of providing investment for critical and large infrastructure projects in Kerala. The State Government undertakes the payment of principal and interest of the loans raised by KIIFB as per Section 9(1) of the Kerala Infrastructure Investment Fund (Amendment) Act, 2016. The audit of KIIFB is being conducted by Accountant General (Audit-II), Kerala, the field office of the Comptroller and Auditor General of India, respondent No.4, under Section 14 of the C&AG(DPC) Act.

8. In the affidavit, reference was made to Section 14 of the C&AG(DPC) Act, which refers to audit of receipts and expenditure of bodies of authorities substantially financed from Union or State Revenues. It has been categorically stated that the conditions stipulated under Section 14 of the C&AG(DPC) Act have been fulfilled in the instant case and the respondent had conducted the audit of KIIFB for the periods from 1st

January 2016 to 31st March 2020 and from 1st April 2020 to 31st March 2024 and the respective Inspection Reports were issued accordingly. In paragraph No. 7 of the said affidavit, it has been stated that, in the years in which the grant or loan extended by the Government to KIIFB falls below the threshold prescribed under the C&AG(DPC) Act, the audit of KIIFB would not *ipso facto* fall within the ambit of Section 14 of the Act. Further, an audit under Section 14 is confined to the examination of the receipts and expenditure of KIIFB, whereas entrustment under Section 20(2) of C&AG(DPC) Act, empowers the 4th respondent to undertake a comprehensive audit, including the certification of the accounts of KIIFB, thereby ensuring that the financial statements are prepared in a true and fair manner. In view of the above, the C&AG had requested Government of Kerala to entrust the audit of KIIFB under Section 20(2) of the C&AG(DPC)Act vide DO Letter No.CAIV/B/18-230 dated 15th March 2018. In response to the

such request, the Additional Secretary, Finance (Infrastructure) Department conveyed that Section 6C of Kerala Infrastructure Investment Fund (Amendment) Act, 2016 provides for the constitution of a highly independent and competent audit / monitoring authority, viz. the Fund Trustee and Advisory Commission (FTAC) which is directly accountable to State Legislature. It was intimated that since such robust arrangements are already there, it does not seem appropriate to request for a separate audit by C&AG under Section 20 of C&AG(DPC) Act. This was followed by letters from the C&AG dated 11th February 2019 and 24th October 2019, justifying the audit of the C& AG. Notwithstanding the aforesaid communications, the audit of KIIFB has not been entrusted to the respondent under Section 19(3) or Section 20(1) or Section 20(2) of the C&AG(DPC) Act till date.

9. The KIIFB, 2nd respondent in its additional counter affidavit has questioned the jurisdiction of C&AG to conduct

such audit and in this regard has relied upon a copy of the D.O. letter No.Exp.B3/311/2018-Fin dated 18th November, 2019. It is submitted that the said letter makes it clear that the State Government has conveyed the decision not to entrust the audit to C&AG under Section 20(2) of the CAG(DPC) Act and has furnished reasons for such decision. It is further stated that it has been settled in a catena of decisions **Aeltemesh Rein v. Union of India** [1], **Union Of India v. Shree Gajanan Maharaj Sansthan**[2], **Common Cause v. Union of India (UOI) and Ors.**[3] that when the legislature has vested the power in the Central Government to notify the date from which the Act would come into force, no mandamus can be issued to the Central Government to issue notification to bring the Act into force. The aforesaid decisions have been relied upon to demonstrate that no writ of mandamus can be issued particularly in a Public

1 (1988) 4 SCC 54
2 (2002) 5 SCC 44
3 AIR 2003 SC 44

Interest Litigation to compel the State Government to exercise its discretionary power under Section 20(3) to entrust audit to the C&AG. The statutory scheme clearly vests such decision-making authority in the executive, subject to consultation with the concerned body. In the present case, the State Government has already exercised its discretion and conveyed its decision as it would be evident from the letter dated 18th November, 2019.

10. The affidavit filed by the C&AG would show that the outstanding balance of loans as on 31st March 2024 borrowed by KIIFB was Rs.20041.52 crore. The State Government had undertaken for the payment of principal and interest of the loans raised by KIIFB as per Section 9(1) of the Kerala Infrastructure Investment Fund (Amendment) Act, 2016. As a substantial amount has been advanced to KIIFB, the entrustment of audit of account of KIIFB to the 4th respondent by the first respondent under Section 19(3) or Section 20(1) or Section 20(2) of the C&AG(DPC) Act would empower the C&AG

to undertake a comprehensive audit including certification of accounts of KIIFB, thereby ensuring that the financed statements of KIIFB are prepared in a true and fair manner.

11. The said affidavit refers to Sections 19(3), 20(1) and 20(2) of the C&AG(DPC) Act. The justification of the said audit emanates from the powers mentioned in the said provisions. Moreover, it appears that on 13th July 2026, the Finance Department has issued a G.O, whereby, the Government have decided to undertake a comprehensive review of the institutional, financial, governance and operational framework of the Kerala Infrastructure Investment Fund Board (KIIFB) with a view to strengthening its long term sustainability, improving governance standards and enhancing its capacity to support the State's infrastructure development. For that purpose, the Government recommended a comprehensive restructuring plan with eminent experts mentioned in the said Government Order dated 13th July 2026.

12. In view of the fact that KIIFB is funded by the Government and that the Government furnishes guarantees in respect of the borrowings made by KIIFB, it is imperative that transparency be maintained in its accounts and functioning. In this context, the response of KIIFB to the audit undertaken by the C&AG is not appreciated. The earlier decision of the State Government not to entrust the audit to the C&AG is something which is more than a matter of concern, particularly having regard to the enormous discrepancies noticed in the preliminary report. In any event, the Government has now taken a stand that KIIFB should be restructured, to which KIIFB may possibly have no objection. As recorded earlier, experts were appointed by Government Order dated 13th July 2026 to formulate a comprehensive restructuring plan in accordance with Clause 7 of the Terms of Reference. This subsequent decision of the State Government completely nullifies its earlier decision of denying C&AG audit.

13. The learned Advocate General, on instructions, has submitted that the Government has accepted the recommendation of the Expert Committee to have the accounts of KIIFB audited by the C&AG. In view of the stand taken by the Government, we are of the view that the grievance raised by the petitioner in this Public Interest Litigation has been substantially addressed.

The Public Interest Litigation stands disposed of. However, there shall be no order as to costs.

Sd/-

SOUMEN SEN
CHIEF JUSTICE

Sd/-

SYAM KUMAR V.M.
JUDGE

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APPENDIX OF WP(PIL) NO. 23 OF 2026

PETITIONER EXHIBITS

Exhibit P1	**A TRUE COPY OF THE EXTRACT OF RELEVANT PAGES OF THE KIIFB NEWSLETTER, VOL. 8, ISSUE 11 (NOVEMBER 2025)**
Exhibit P2	**A TRUE COPY OF THE EXTRACT OF THE RELEVANT PAGES OF THE KEY INFORMATION DOCUMENT DATED 1 AUGUST 2025**
Exhibit P3	**A TRUE COPY OF EXTRACTS OF SECTIONS 15 AND 16 OF THE KIIF ACT**
Exhibit P4	**A TRUE COPY OF THE EXTRACT OF INDEPENDENT AUDITOR'S REPORT FROM THE KIIFB ANNUAL REPORT FOR THE YEAR 2024-25**
Exhibit P5	**A TRUE COPY OF THE RTI APPLICATION ALONG WITH REPLY DATED 16.12.2025 WITH ENGLISH TRANSLATION IS PRODUCED UNDER THE RIGHT TO INFORMATION ACT, 2005**
Exhibit P6	**A TRUE COPY OF THE RELEVANT PAGES OF THE KERALA MINERALS AND METALS LTD. (KMML) DEMONSTRATING THE APPOINTMENT OF AUDITORS BY THE CAG AND THE CONDUCT OF SUPPLEMENTARY AUDIT**
Exhibit P7	**A TRUE COPY OF THE RELEVANT PAGES OF THE KERALA STATE BEVERAGES CORPORATION (BEVCO)'S ANNUAL REPORTS FOR THE YEAR 2022-23, DEMONSTRATING THE APPOINTMENT OF AUDITORS BY THE CAG AND THE CONDUCT OF SUPPLEMENTARY AUDIT**
Exhibit P8	**A TRUE COPY OF THE RTI APPLICATION ALONG WITH REPLY DATED 07.01.2026**
Exhibit P9	**A TRUE COPY OF THE REPRESENTATION DATED 15TH DECEMBER, 2025, SENT BY PETITIONER TO ALL RESPONDENTS ALONG WITH POSTAL RECEIPTS AND ACKNOWLEDGMENT**
Exhibit P10	**TRUE COPY OF STATE FINANCE AUDIT REPORT**

OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA FOR THE YEAR ENDED MARCH 2019

RESPONDENT EXHIBITS

Exhibit R3 (a)	**The true copy of the annual report of KIIFCON Private Limited filed with Registrar of Companies.**
Exhibit R2 (a)	**True Copy of the audited accounts of KIIFB for the financial year 2024-2025 is produced herewith and marked as Exhibit R2(a).**
Exhibit R2(b)	**Copy of the order dated 12/12/2024 authorizing the legal officer to conduct cases on behalf of the CEO (functions 38 and 39) is produced herewith as Exhibit R2(b).**
Ext.R4(a)	**True copy of Letter No. CA IV/B/18-230 dated 15.03.2018**
Ext.R4(b)	**True copy of the reply received from the office of the Additional Secretary, Finance (Infrastructure) Department, dated 17.05.2018**
Ext.R4(c)	**True copy of the letter DO No. AG (E and RSA)2018-19 to the 1st respondent dated 11.02.2019**
Ext.R4(d)	**True copy of DO letter No. AG (G and SSA) 2019-20/98 to the 1st respondent dated 24.10.2019**
Exhibit R2 (c)	**The true copy of the compilation of guidelines to be followed for entertaining letters/Petitions as public interest litigations.**
Exhibit R2 (d)	**A true copy of the D.O letter No. Exp.B3/311/2018-Fin dated 18-11-2019.**