

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

MONDAY, THE 1ST DAY OF NOVEMBER 2021 / 10TH KARTHIKA, 1943

CRL.MC NO. 3137 OF 2019

(FOR QUASHING THE FIR NO.1/2019/SIU-1 OF VACB ON THE FILE
OF THE COURT OF ENQUIRY COMMISSIONER & SPECIAL JUDGE
(VIGILANCE), TRIVANDRUM)

PETITIONERS/ACCUSED:

DR.JACOB THOMAS IPS,
AGED 59 YEARS
THEJUS, MANNAMoola, PEROORKADA P.O.,
THIRUVANANTHAPURAM.

BY ADV C.UNNIKRISHNAN (KOLLAM)

RESPONDENTS/STATE:

1 THE STATE OF KERALA,
REPRESENTED BY *[DIRECTOR OF VIGILANCE, VACB
TRIVANDRUM THROUGH] THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA - 682 031.

*(AS PER THE ORDER DATED 17/10/2019 IN
CRL.M.A.NO.6/2019 IN CRL.M.C.NO.3131/2019
"DIRECTOR OF VIGILANCE, VACB TRIVANDRUM THROUGH"
IS DELETED FROM THE DESCRIPTION OF THE 1ST
RESPONDENT)

2 THE SECRETARY TO GOVERNMENT OF KERALA,
DEPARTMENT OF PORTS, SECRETARIAT,
TRIVANDRUM - 695 001.

R3 THE VIGILANCE DIRECTOR
VIGILANCE AND ANTI CORRUPTION BUREAU,
THIRUVANANTHAPURAM

R4 THE INVESTIGATING OFFICER OF FIR NO. 1/2019/SIU
OF VACB
VIGILANCE AND ANTI CORRUPTION BUREAU,
THIRUVANANTHAPURAM

(R3 AND R4 ARE IMPEADED AS ADDITIONAL
RESPONDENTS 3 AND 4 IN CRL.M.C.NO.31317/2019 AS
PER ORDER DATED 17/10/2019 IN CRL.M.A.NO.7/2019)

SRI GRASHIOUS KURAKOSE - ADDL.DIRECTOR GENERAL OF
PROSECUTION

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 06.10.2021, THE COURT ON 01.11.2021 PASSED THE
FOLLOWING:

R.NARAYANA PISHARADI, J

Crl.M.C.No.3137 of 2019

Dated this the 1st day of November, 2021

ORDER

When a decision taken is the result of the collective wisdom of a competent committee of public servants, can only one among them be selected and crucified on the allegation of corruption as if it is a personal or individual decision?

2. The petitioner was an IPS officer who had served as Director General of Police in the Kerala Cadre. He was the Director of Ports during the period from 16.09.2009 to 17.03.2014.

3. This application is filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') for quashing Annexure-A1 F.I.R registered against him by the Vigilance and Anti-Corruption Bureau (VACB) as Crime No.01/2019 of the Special Investigation Unit-I,

Thiruvananthapuram under Section 13(1)(d)(ii) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act') and also under Section 120B of the Indian Penal Code.

4. The petitioner is the first accused in the above case. The second accused is shown in Annexure-A1 F.I.R as "Unknown others".

5. The allegations in Annexure-A1 F.I.R read as follows:

"That a Preliminary Enquiry was conducted as VE 06/2018/SRT as ordered vide G.O.(Rt) No.203/2018/VIG dated 27.11.2018 against Sri. Dr. Jacob Thomas IPS on the allegation of official misconduct while working as Director of Ports during the period from 16.09.2009 to 17.03.2014 in connection with the purchase of Cutter Suction Dredger from M/s IHC Merwede Holland.

The enquiry revealed that Shri. Dr. Jacob Thomas IPS while holding the post of Director of Ports in Ports Department under Government of Kerala proposed a tender for the purchase of Cutter Suction Dredger for Ports Department without the approval of the Technical Committee. He had concealed the fact from the Government that the tender is a Global Tender and obtained Administrative Sanction from the Government for Rs.8 Crores. He had neither wrote a letter to the

Public Relations Department in Government of Kerala nor published the tender notice in Indian Trade Journal as stipulated in para 15(c) of the Old Store Purchase Manual. Further, Shri. Dr.Jacob Thomas IPS, i.e. the A1, floated the tender without proper estimate. Among the tenderers, M/s IHC Merwede Holland was found technically qualified. Hence the price bid of the M/s IHC Merwede Holland was opened. Though the amount quoted by them was nearly Rs.20 Crores which was two and a half more times than the Administrative Sanction, the A1 accepted their bid on 18.01.2012 without obtaining revised administrative sanction from the Government.

That the enquiry has revealed that A1 misrepresented the fact before the Government and negotiated with the M/s IHC Merwede Holland by overlooking M/s BEML who was the L1 without stating any valid reason for awarding the contract to M/s IHC Merwede Holland. Here it was revealed that A1 wilfully violated the Central Vigilance Commission norms stipulated in Order No.005CRD 19 dated 05.07.2005.

Further it was revealed that A1 abruptly cancelled the earlier tender on 30.01.2012, when the L1 M/s BEML, a Public Sector Undertaking, filed the complaint. Thereafter he hastily floated the retender without informing the cancellation of first tender to the Government and thereby violated the principles of

public procurement and Rule 24(j)(iii) of old Store Purchase Manual. Later the A1 purchased the Cutter Suction Dredger from M/s IHC Merwede Holland on 28.05.2013 overlooking the lowest quoted M/s BEML by paying an amount of Rs.19,79,03,000/- instead of the sanctioned amount of Rs.8 Crores by the Government and as such caused loss to the public exchequer and corresponding gain to the Accused."

6. The investigating officer has filed a statement/status report with regard to the matters stated in the present application and also with regard to the allegations in Annexure-A1 F.I.R.

7. Heard Adv.Sri.C.Unnikrishnan, learned counsel for the petitioner and Sri.Gracious Kuriakose, learned Additional Director General of Prosecutions, Kerala. I have also heard the elaborate submissions made by Adv.Sri.Kaleeswaram Raj, who appeared for the third party (hereinafter referred to as 'the third party') who has sought permission to get impleaded in this case as additional respondent .

8. Sri.C.Unnikrishnan, learned counsel for the petitioner, has contended that there is absolutely no basis for the allegations made in Annexure-A1 F.I.R against the petitioner and that the

allegations are the result of distortion of real facts. Learned counsel also contended that every procedure adopted by the petitioner in the transaction relating to the purchase of cutter suction dredger was transparent with due information given to the Government. Learned counsel also submitted that the allegation in the F.I.R that the lowest bidder was M/s BEML and not M/s IHC Merwede is factually incorrect.

9. *Per contra*, the learned Additional Director General of Prosecutions gave emphasis to the allegation in the F.I.R that the dredger was purchased for an exorbitant amount by overlooking the lowest tender which was submitted by M/s BEML. He would submit that the investigation has to be conducted to bring out the truth. He also submitted that it would not be proper on the part of this Court to nip the investigation at the threshold without permitting the investigating agency to enquire into the truth of the allegations against the petitioner.

10. Sri. Kaleeswaram Raj, who appeared for the third party, would support the submissions made by the learned Additional Director General of Prosecutions. He has invited the attention of

this Court to the documents produced by the third party and contended that the allegations against the petitioner require a thorough investigation.

11. Before considering the merits of the matter, the principles enunciated by the Apex Court regarding quashing of the F.I.R shall be taken note of.

12. The well settled test is, whether the allegations contained in the FIR, as they stand, make out the offences alleged. The locus classicus on this issue is the judgment of the Apex Court in **State of Haryana v. Bhajan Lal (AIR 1992 SC 604)** wherein a set of situations has been illustrated where the High Court may exercise its jurisdiction under Article 226 of the Constitution or Section 482 of the Code. The Apex Court has held as follows:

"In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of

the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as

contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

13. If the allegations made in the first information report, *prima facie*, disclose a cognizable offence, interference with the investigation by invoking the power under Section 482 of the Code is not proper. It can be done only in the rarest of rare cases where the court is satisfied that the first information report does not disclose commission of any cognizable offence. Once an offence is disclosed, an investigation into the offence must necessarily follow in the interests of justice. Investigation is necessary to collect or gather necessary materials for

establishing and proving the offence which is disclosed. In the absence of a proper investigation in a case where an offence is disclosed, the offender would succeed in escaping from the consequences to the detriment of the cause of justice and the society at large. It is on the basis of this principle that the Court normally does not interfere with the investigation of a case where an offence has been disclosed. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. In considering whether any offence is disclosed or not, the Court has mainly to take into consideration the allegations in the complaint or the first information report. In appropriate cases, the Court may take into consideration the relevant facts and circumstances of the case. On a consideration of all the relevant materials, the Court has to come to the conclusion whether an offence is disclosed or not. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for

collecting materials for proving the offence (See **State of West Bengal v. Swapan Kumar Guha : AIR 1982 SC 949** and **Neeharika Infrastructure Private Ltd. v. State of Maharashtra : AIR 2021 SC 1918**).

14. In **Swapan Kumar Guha** (supra), the Apex Court has held that "whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case". It has also been held that "the Court may in appropriate cases take into consideration the relevant facts and circumstances of the case" and "on a consideration of all the relevant materials, the Court has to come to the conclusion whether an offence is disclosed or not". Therefore, the allegations in the F.I.R have to be considered alongwith the facts and circumstances of each particular case. Very often, if the allegations are considered without taking into consideration the surrounding facts and circumstances, the allegations alone may make out an offence and sometimes, they may not make out an offence. Torn out of context and the circumstances, allegations alone, may not sometimes make any sense. Therefore, it is

necessary for the Court to consider the allegations in the F.I.R alongwith the facts and circumstances of the case.

15. The allegations against the petitioner in Annexure-A1 F.I.R are made in connection with the purchase of a cutter suction dredger from M/s IHC Merwede Holland. The allegations stated in the F.I.R can be enumerated as follows: (1) The petitioner, while holding the post of Director of Ports, proposed a tender for purchase of cutter suction dredger for the Ports Department without the approval of the Technical Committee. (2) The petitioner concealed from the Government the fact that the tender is a global tender and obtained administrative sanction of eight crores rupees for the purchase of the dredger. (3) The petitioner did not publish the tender notice in Indian Trade Journal as stipulated in paragraph 15(c) of the Old Stores Purchase Manual. (4) The amount quoted by M/s IHC Merwede was nearly 20 crores rupees and the petitioner accepted the bid on 18.01.2012 without obtaining revised administrative sanction from the Government. (5) The petitioner negotiated with M/s IHC Merwede overlooking the lowest tender submitted by M/s

BEML. (6) When M/s BEML, the lowest tenderer filed a complaint, the petitioner abruptly cancelled the earlier tender on 30.01.2012 and hastily floated re-tender without informing the Government of the cancellation of the first tender. (7) Later, the petitioner purchased the cutter suction dredger from M/s IHC Merwede on 28.05.2013 overlooking the lowest quoted tender of M/s BEML by paying an amount of Rs.19,79,03,000/- instead of the sanctioned amount of eight crores rupees and thereby caused loss to the public exchequer and corresponding gain to the accused.

16. Now, I shall consider whether the allegations stated above have any factual basis and if so, they disclose the offences alleged against the petitioner.

Absence of Approval of Technical Committee for Tender.

17. The first allegation against the petitioner is that he proposed a tender for purchase of cutter suction dredger for the Ports Department without the approval of the Technical Committee. Learned Additional Director General of Prosecutions has not pointed out the basis of this allegation made against the

petitioner. It is not explained what was the need for obtaining the approval of the Technical Committee for floating the tender. The prosecution has no case that the dredger should have been purchased by resorting to any other method.

18. In fact, the procurement of the cutter suction dredger was an idea mooted not by the petitioner. It was as per the letter dated 04.08.2010 addressed to the Government that the petitioner made the proposal for purchase of the cutter suction dredger. Even before the proposal made by the petitioner, as per Annexure-A49 letter dated 22.11.2009, the Kerala State Maritime Development Corporation had forwarded to the Government the proposal for procurement of a cutter suction dredger of the same specification for the Ports Department, at an estimated cost of eight crores rupees.

19. Further, Annexure-A64 letter dated 30.04.2019 sent by the then Director of Ports (not the petitioner) shows that Technical Committee was constituted and in the meeting held on 10.08.2011, the Technical Committee had approved the specifications of the cutter suction dredger to be procured and

also the estimated cost as eight crores rupees.

Concealment of the Nature of the Tender.

20. The next allegation against the petitioner is that he concealed from the Government the fact that the tender is a global tender.

21. As already noticed, even before the proposal made by the petitioner, the Kerala State Maritime Development Corporation had forwarded to the Government the proposal for procurement of a cutter suction dredger of the same specification at the same cost.

22. Annexure-A4 letter dated 27.03.2012 sent by the petitioner to the Government mentions that the tender invited was Global e-tender. The Department Purchase Committee (DPC), including three representatives of the Government, was convened subsequent to Annexure-A4 letter. If there was any defect in the nature of the tender invited, the Department Purchase Committee would and should have taken note of it and it would not have considered the tenders received.

23. Annexure-A7 is the copy of the tender notice dated 15.11.2011. It shows that it was issued not by the petitioner but by Manoj Joshi, who was presumably holding charge of the Director of Ports at that time. The petitioner cannot be blamed for any defect in that notice.

Publication of Tender Notice in Indian Trade Journal.

24. The next allegation against the petitioner is that he did not publish the tender notice in Indian Trade Journal as stipulated in paragraph 15(c) of the Old Stores Purchase Manual.

25. Clause 15(c) of the Old Stores Purchase Manual regarding publication of the tender notice in Indian Trade Journal is not mandatory. What this provision says is only that, in addition to to the publication in the Government Gazette, the tender notice may be published in the Indian Trade Journal.

26. Annexure-A8 is the copy of the letter dated 15.11.2011 addressed by Sri.Manoj Joshi (presumably the person who was holding the charge of Director of Ports at that time in the absence of the petitioner) to the Director of Public Relations Department. It shows that request was made for making

necessary arrangements for the publication of the global tender notice in English and Malayalam dailies and also in Indian and International Trade Journals. Annexure-A8 relates to the first tender notice.

27. Regarding the re-tender notice, Annexure-A19 letter dated 30.01.2012 addressed to the Director of Public Relations by the petitioner would show that copies of the tender notice had been forwarded for publication in the English and Malayalam dailies and also in Indian and International Trade Journal.

28. It is significant that in the above letters forwarded to the Director of Public Relations, it was mentioned that the tender was a global e-tender.

29. Annexure-A4 is the copy of the letter dated 27.03.2012 written by the petitioner to the Secretary, Fisheries and Port Department. In Annexure-A4 letter, the petitioner has narrated the entire steps taken and the procedure adopted in inviting the tenders. Therefore, as early as in the last week of March 2012, the Government was aware of the entire steps taken by the petitioner in inviting the tenders.

Absence of Revised Administrative Sanction

30. Admittedly, the Government had granted administrative sanction for purchase of a cutter suction dredger to Ports Department at an estimated cost of eight crores rupees. As per the Government Order dated 01.06.2012 (Annexure-A2), the Government had accorded revised administrative sanction for procurement of the dredger at an estimated cost of twenty crores rupees.

31. The relevant portions of the above Government Order read as follows:

"2. The Director of Ports vide letter read as 3rd paper above has reported Government that the Head of Account 5051-02-200-96-Capital Dredging at Minor Ports is not operating in the current financial year (2012-13). As per the approved plan write-up for the year 2012-13, the purchase of dredger is included under the Head of Account "5051-02-200-83 Azheekal Port" in which a total outlay of Rs.200 lakhs has been provided as budget provision for the year 2012-13. It has also been reported by the Director of Ports that as the rate quoted by the lowest bidder is Rs.19,95,33,515/- (including LC opening charge), and has requested for Revised Administrative Sanction for purchase of the dredger to Ports Department at a total cost of Rs.20

Crores by debiting the expenditure under Head of Account "5051-02-200-83 Azheekal Port". The additional amount required for the purpose is proposed to be met through Re-appropriation/Supplementary Demand for Grants.

3. Government have examined the matter in detail and are pleased to accord Revised Administrative Sanction for procurement of a Cutter Suction Dredger with a dredging capacity of 200 m³/hr and dredging depth of 10m to Port Department at an estimated cost of Rs.20 Crores subject to stage payment condition mentioned in the Government Order 2nd paper above by debiting the expenditure under the head of Account "5051-02-200-83 Azheekal Port" on condition that the balance amount would be found out through re-appropriation. The Director of Ports will prioritise the Departmental plan activities for the financial year 2012-13 in such a way that the total cost of the projects implemented is limited to the over all plan outlay of the Department and to furnish reappropriation/revised proposal accordingly."

(emphasis supplied)

32. The Government accepted the tender submitted by M/s IHC Merwede as per Annexure-A3 Government Order dated 06.02.2013. The first paragraph of this Government Order reads as follows:

"As per Government Order read as 1st paper above Administrative sanction was accorded for the procurement of Cutter Suction Dredger at an estimated cost of Rs.800 lakhs by debiting the expenditure under the Head of Account 5051-02-200-96-Capital Dredging at Minor Ports. As per Government Order read as 2nd paper above, revised Administrative sanction was accorded for the procurement of cutter suction dredger at an estimated cost of Rs.20 crores."

(emphasis supplied)

33. Therefore, the allegation that the dredger was purchased without revised administrative sanction from the Government is not only baseless but false.

Re-tender Without Sanction From the Government

34. Another allegation against the petitioner is that he abruptly cancelled the first tender on 30.01.2012 and hastily floated re-tender without informing the Government of the cancellation of the first tender.

35. In this context, it is to be noticed that there was only one technically qualified tender received in response to the first tender notice and it was from M/s.IHC Merwede. The tender submitted by M/s. BEML in response to the first tender notice was

found to be not qualified as it was submitted not online. On evaluation by the Technical Committee, it was found that, out of the three remaining tenders received, only the tender submitted by M/s.IHC Merwede was technically qualified. Other companies who submitted the tenders did not qualify because they had not previously supplied three dredgers, which was one of the conditions of the tender.

36. Moreover, even at that time, when the financial bid was opened, it was found that the amount quoted by M/s.IHC Merwede was Rs.19,98,26,000/-.The Government did not sustain any loss by not accepting the only tender which was found to be technically qualified. The re-tender process was not against public interest.

Violation of Procedure Only

37. The offences alleged against the petitioner are under Section 13(1)(d)(ii) of the Act and under Section 120B of the Indian Penal Code.

38. Section 13(1)(d) of the Act states that, a public servant is said to commit the offence of criminal misconduct, if he,-(i) by

corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.

39. Even if the entire allegations against the petitioner (excluding the allegation of ignoring the lowest bid, which shall be discussed a little later) are accepted as true, either individually or cumulatively, they do not constitute criminal misconduct within the purview of Section 13(1)(d)(ii) of the Act.

40. In **Chittaranjan Shetty v. State : (2015) 15 SCC 569**, it has been held as follows:

"In order to prove the offence under Section 13(1)(d)(ii) of the Act, it must be established that a public servant has abused his position in order to obtain for himself or for any other person, any valuable thing or pecuniary advantage, and that, in this context, the "abuse" of position must involve a dishonest intention".

41. In **C. Chenga Reddy v. State of A.P : AIR 1996 SC 3390**, the Apex Court has held that even when codal violations were established and it was also proved that there were irregularities committed by allotting/awarding the work in violation of circulars, that by itself was not sufficient to make out a criminal case under the Act. The Apex Court held as follows:

"On a careful consideration of the material on the record, we are of the opinion that though the prosecution has established that the appellants have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders issued from time to time in the matter of allotment of work of jungle clearance on nomination basis and have committed departmental lapse yet, none of the circumstances relied upon by the prosecution are of any conclusive nature and all the circumstances put together do not lead to the irresistible conclusion that the said circumstances are compatible only with the hypothesis of the guilt of the appellants and wholly incompatible with their innocence. That because of the actions of the appellants in breach of codal provisions, instructions and

procedural safeguards, the State may have suffered financially, particularly by allotment of work on nomination basis without inviting tenders, but those acts of omission and commission by themselves do not establish the commission of criminal offences alleged against them."

(emphasis supplied)

The observations made by the Apex Court as above indicate that, procedural violations, even if accepted as true, without anything more, do not constitute an offence under Section 13(1) (d)(ii) of the Act.

Allegation Which Forms the Foundation of the FIR.

42. The main allegation against the petitioner in the FIR is that, "A1 purchased the Cutter Suction Dredger from M/s IHC Merwede, Holland on 28.05.2013 overlooking the lowest quoted M/s BEML by paying an amount of Rs.19,79,03,000/- instead of the sanctioned amount of Rs.8 Crores by the Government and as such caused loss to the public exchequer and corresponding gain to the Accused".

43. The very basis of the above allegation is that administrative sanction obtained was only for eight crores rupees

and that the lowest quotation submitted was that of M/s BEML. As already noticed, the Government had accorded revised administrative sanction for Rs.20 crores. The Department Purchase Committee (DPC) had discussed the minute details of the tenders submitted by the two companies and found that the tender submitted by M/s IHC Merwede was the lowest. Therefore, the very basis of the the F.I.R stands shattered.

44. The allegation in the F.I.R is that it was the petitioner who accepted the tender of M/s IHC Merwede and purchased the cutter suction dredger from that company.

45. As noticed earlier, as per Annexure-A3 Government Order dated 06.02.2013, the acceptance of the tender was made by the Government, not by the petitioner, on the recommendation of the Department Purchase Committee. The third and the fourth paragraphs of this order read as follows:

"(3) As per letter read as 3rd paper above, the Director of Ports has submitted a purchase proposal for placing before the DPC for the consideration and recommended the bid submitted by M/s.IHC Merwede for the purpose. The DPC in its meeting held on 16.08.2012 considered the proposal and decided to accept the offer of M/s. IHC

Merwede.”

(4) In the above circumstances, Government are pleased to accept the offer of M/s.IHC Merwede for the procurement of Cutter Suction Dredger at an estimated cost of Rs.19,83,64,161/- (Rupees Nineteen Crores Eighty Three Lakhs Sixty Four Thousand One Hundred and Sixty One only) (including AMC for 5 years and taxes and duties) by debiting the expenditure under the Head of Account 5051-02-200-83-Azheekal Port.”

(emphasis supplied)

46. The above Government Order would show that it was the Department Purchase Committee (DPC) which decided to accept the tender submitted by M/s.IHC Merwede. Annexure-A3 Government Order itself shows that the amount quoted by that company included AMC for five years and taxes and duties. The Government accepted the recommendation made by the DPC. However, the allegation in the FIR is that it was the petitioner who purchased the dredger by accepting the tender of M/s.IHC Merwede.

47. Annexure-A6 is the copy of the minutes of the meeting of the Department Purchase Committee held on 16.08.2012. It shows that the following persons were the members of that

committee.

- (1) Sri.James Varghese, Principal Secretary (Ports).
- (2) Dr.Jacob Thomas, Director of Ports.

- (3) Sri. L.S. Padmakumar, Additional Secretary,
(Finance Department).
- (4) Sri.N.Kumar, Additional Secretary
(Stores Purchase Department).

48. Annexure-A6 minutes would show that the DPC had very elaborately considered the details of the tender submitted by M/s.IHC Merwede and M/s.BEML and found that the tender submitted by M/s.IHC Merwede was the lowest bid. The DPC had also considered whether the tender submitted by M/s.IHC Merwede included taxes, duties, fees etc. The DPC accepted the clarification made by M/s.IHC Merwede that the amount quoted by it was inclusive of all taxes and duties to hand over the vessel in the commissioned stage to the department with annual maintenance contract.

49. The decision to accept the tender submitted by M/s.IHC Merwede was the collective decision of the members of the DPC

and not the individual decision of the petitioner who was only one of its members. Annexure-A6 minutes does not show that any member of the DPC had expressed dissent or disagreement in the matter of accepting the tender submitted by M/s.IHC Merwede.

50. Strangely, the F.I.R was registered only against the petitioner on the ground that the lowest bid was not that of M/s.IHC Merwede. The three other members of the DPC, who were parties to the decision taken to accept the tender submitted by M/s.IHC Merwede and who were representatives of the Government, do not figure as accused in the F.I.R. If the petitioner has committed criminal misconduct by taking the decision, in his capacity as one of the members of the DPC, to accept the tender submitted by M/s.IHC Merwede, it eludes comprehension why the other members of the DPC cannot be attributed with the same culpability.

51. As per Annexure-A3 order, it was the recommendation of the DPC which was accepted by the State Government and not that of the petitioner. The State Government accepted the tender of M/s.IHC Merwede on the basis of the recommendation made

by the DPC which consisted of representatives of three government departments, including an Additional Secretary of the Finance Department. The State Government had the right or option to refuse or accept such recommendation.

52. In **State of M.P v. Sheetla Sahai : (2009) 8 SCC 617**, the Apex Court had occasion to observe as follows:

"If upon consideration of the entire materials on record, independent opinion had been rendered and recommendations were made, it is difficult to comprehend as to how that by itself would constitute a criminal misconduct or leads to the conclusion of hatching any criminal conspiracy. Recommendations made by the Committee or the opinion rendered by an independent officer like Financial Adviser need not be acted upon. It was for the State to take a decision. Such a decision was required to be taken on the basis of the materials available".

(emphasis supplied)

53. In **Sheetla Sahai** (supra), the Apex Court had also occasion to observe as follows:

"It is also interesting to notice that the prosecution had proceeded against the officials in

a pick and choose manner. We may notice the following statements made in the counter affidavit which had not been denied or disputed to show that not only those accused who were in office for a very short time but also those who had retired long back before the file was moved for the purpose of obtaining clearance for payment of additional amount from the government, viz., M. N. Nadkarni who worked as Chief Engineer till 24/03/1987 and S.W. Mohogaonkar, Superintending Engineer who worked till 19/06/1989 have been made accused but, on the other hand, those who were one way or the other connected with the decision, viz., Shri. J. R. Malhotra and Mr. R.D. Nanhoria have not been proceeded at all. We fail to understand on what basis such a discrimination was made".

(emphasis supplied)

54. In **Sai Bharathi v. Jayalalitha : AIR 2004 SC 692**, it has been observed as follows:

"Regarding the charge against A3, who was the Chairman cum Managing Director of TANSI from 1.8.1991 to 10.7.1992, we have to bear in mind certain facts. The decision to accept the offer of Jaya Publications was that of the Board and not of A3 alone. PW8 the General Manager and

Company Secretary of TANSI admitted that all the decisions were taken by the Sub-Committee and no decision was taken independently by any individual and A3 followed the decision of the Sub-Committee, which was approved by the Board, Therefore, there was no evidence to show that A3 acted against the decision to favour Jaya Publications. The sale of land to Jaya Publications is a collective decision of the Board and not of any individual, the price on which the land was to be sold and the price on which the buildings were to be sold were decided by the Board of Directors to which the Government gave approval and thus there was no independent assignment to A3 in deciding the matter nor did he suppress any document by not placing them before the Board of Directors".

(emphasis supplied)

55. Regarding the discrimination shown by the investigating agency in implicating persons in corruption cases, in **Himachal Pradesh Cricket Association v. State of Himachal Pradesh : 2018 SCC OnLine SC 2419**, it has been observed as follows:

"This Court gets an impression that in the entire conspiracy story put up by the prosecution, high Government officials are deliberately let off and

very junior Officers were become scapegoat in order to ensure that a case under PC Act survives in respect of appellants as well who are not public servants. Even otherwise, when the aforesaid eight persons are not charged or proceeded against for want of prosecution, this lends support to the allegations of the appellants in imputing motives for their prosecution”.

56. In the light of the decisions of the Apex Court above, it can be found that when culpability is attributed on the basis of a collective decision taken by a group of persons, one person cannot be singled out from them and criminal proceedings cannot be initiated against only one of them. If it is done, it indicates malice on the part of the investigating officer.

57. The discussion above leads to the conclusion that the allegations in the F.I.R do not reveal commission of an offence under Section 13(1)(d)(ii) of the Act by the petitioner.

Criminal Conspiracy

58. The offence under Section 120B of the Indian Penal Code is alleged against the petitioner. It is alleged that he conspired with M/s. IHC Merwede and pursuant to such

conspiracy, he awarded the contract to that company.

59. As already noticed, the petitioner, either personally or in his official capacity as the Director of Ports, had not awarded the contract to M/s. IHC Merwede. The decision to accept the tender of that company was the collective decision of the Department Purchase Committee which included three representatives of the Government.

60. Though it is alleged that the petitioner had conspired with M/s. IHC Merwede, that company or any officer of that company, is not named as accused in the F.I.R.

61. In **Sheetla Sahai** (supra), the Apex Court has held as follows:

"Criminal conspiracy is an independent offence. It is punishable separately. Prosecution, therefore, for the purpose of bringing the charge of criminal conspiracy read with the aforementioned provisions of the Prevention of Corruption Act was required to establish the offence by applying the same legal principles which are otherwise applicable for the purpose of bringing a criminal misconduct on the part of an accused".

The F.I.R in this case does not contain sufficient allegations with regard to criminal conspiracy, satisfying the above test.

62. It is alleged that the petitioner had negotiated with M/s. IHC Merwede, by overlooking the tender submitted by M/s. BEML. If this allegation is with reference to the clarification obtained from M/s. IHC Merwede as to whether the amount quoted by them included the taxes and duties and the annual maintenance charges, it is to be noted that the other members of the DPC was aware of it and the minutes of the DPC meeting makes specific reference to it and such clarification sought cannot be termed as any criminal conspiracy.

63. If the allegation regarding conspiracy is with reference to any negotiation made with M/s. IHC Merwede in relation to the tender submitted by that company in response to the first tender notice, it is to be noted that M/s. IHC Merwede was the only qualified bidder then. The tender then submitted by M/s IHC Merwede was not acted upon or accepted. Further, all tender proceedings taken on the basis of the first tender notice have got no significance because re-tender was floated.

64. It is alleged in the statement filed by the investigating officer that M/s IHC Merwede had sent an e-mail to the petitioner on 30.08.2011 and it would indicate the unholy nexus between the petitioner and that company. The e-mail was sent not to the personal e-mail address of the petitioner but to the e-mail address of the Directorate of Ports and nothing turns upon it. More over, this e-mail was sent long before the initiation of tender proceedings. The contents of this e-mail do not indicate any conspiracy between the petitioner and M/s IHC Merwede or any unholy nexus between them. Further, there is also no allegation raised against the petitioner in the F.I.R with reference to the above e-mail communication. It is to be remembered that, unlike in an ordinary case, it is an F.I.R lodged after a detailed preliminary enquiry.

65. True, the F.I.R is not an encyclopaedia. It may not contain all facts and allegations. However, in this case, as already noticed, the F.I.R was registered against the petitioner after a detailed preliminary enquiry. Therefore, the F.I.R should have at least contained the necessary allegations or facts.

66. The statement/status report filed by the investigating officer in this case is dated 26.06.2019. Subsequently, investigation has been conducted for more than two years. No additional statement was filed by the investigating officer with regard to the progress of the investigation, if any, made and the evidence, if any, collected against the petitioner during the course of such investigation.

67. The discussion above leads to the conclusion that the allegations in Annexure-A1 F.I.R do not constitute the ingredients of the offences alleged against the petitioner. It follows that the first and the third conditions mentioned in **Bhajan Lal** (supra) are satisfied to quash the F.I.R against the petitioner.

68. As rightly contended by Adv. Kaleeswaram Raj, learned counsel for the third party, the power under Section 482 of the Code shall be exercised by this Court only sparingly and with circumspection and that too in rare cases to quash the F.I.R. However, the High Court shall not feel inhibited when the circumstances warrant exercise of such power to do substantial justice to the parties. The Court would be justified to quash any

proceeding, if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of the proceedings would otherwise serve the ends of justice.

69. In **Himachal Pradesh Cricket Association** (supra), the Apex Court has observed as follows:

"In the instant case, the High Court simply noted those judgments which put a note of caution in exercising the powers under Section 482 Code of Criminal Procedure to quash such proceedings and dismissed the petition with a shallow examination of the case, thereby glossing over the material facts (which are noted hereinabove) and failing to examine that these pertinent aspects were sufficient to demonstrate that no criminal case was made out, particularly when all the concerned officers, who had taken the decision, were let off on the ground that they had not committed any wrong".

(emphasis supplied)

70. The third party had made a complaint to the Government regarding the irregularities allegedly committed in the purchase of cutter suction dredger for the Ports Department. The Additional Chief Secretary (Finance) conducted an inspection at the Directorate of Ports on the basis of that complaint. The

third party has produced copy of the inspection note made by the Additional Chief Secretary (Finance). Adv. Kaleeswaram Raj, learned counsel for the third party, invited the attention of this Court to the irregularities mentioned as 28 points in the above report and contended that all those aspects need a thorough investigation.

71. The copy of the inspection note made by the Additional Chief Secretary (Finance) is seen marked as a confidential report. It is not known how the third party has obtained a copy of such confidential inspection note. However, I do not intend to comment upon it further and I leave the matter there. Suffice it to state that, if the third party has got any grievance that the petitioner has committed any cognizable offence based on allegations other than mentioned in Annexure-A1 F.I.R, he can take appropriate steps under the Code before the competent court having jurisdiction for redressing his grievances in that regard.

72. Certain persons, other than the petitioner, are referred to by their name in this order. It is made clear that, no

observation made in this order with regard to the role of any such person, in the transaction relating to purchase of cutter suction dredger, is meant to suggest that such person has committed any offence. The observations in that regard have been made only for the purpose of arriving at a proper decision in this petition.

73. Consequently, the petition is allowed. Annexure-A1 F.I.R, as against the petitioner, is quashed.

All pending interlocutory applications are closed.

(sd/-)

R.NARAYANA PISHARADI, JUDGE

jsr

APPENDIX OF CRL.MC 3137/2019

PETITIONER'S ANNEXURES:

- ANNEXURE A1 TRUE COPY OF THE FIR IN CRIME NO.1/2019/SIU-1 OF VACB ON THE FILE OF THE COURT OF ENQUIRY COMMISSIONER & SPECIAL JUDGE (VIGILANCE), TRIVANDRUM.
- ANNEXURE A2 TRUE COPY OF THE ADMINISTRATIVE SANCTION FOR THE PROCUREMENT OF CUTTER SUCTION DREDGER AT AN ESTIMATED COST OF RS.20 CRORES VIDE G.O.(RT) NO.444/2012/F&PD DATED 01/06/2012.
- ANNEXURE A3 TRUE COPY OF THE G.O.(RT) NO.83/2013/F & PD DATED 06/02/2013 TENDER ACCEPTANCE ORDER.
- ANNEXURE A4 TRUE COPY OF THE REPORT CONTAINING OBSERVATION OF THE TENDER EVALUATION COMMITTEE OF THE TECHNICAL BIDS AND THE FINANCIAL BIDS SENT TO THE GOVERNMENT VIDE LR.NO.D1-3725/2010/DP DATED 27/03/2012.
- ANNEXURE A5 TRUE COPY OF THE NOTE SENT FROM THE DIRECTORATE TO THE DPC IN THE SECRETARIAT RECOMMENDING FACTS AND FIGURES OF THE TENDER AS OBSERVED BY THE MULTI-MEMBER TENDER EVALUATION COMMITTEE CONSTITUTED BY THE GOVT.
- ANNEXURE A6 TRUE COPY OF THE MINUTES OF THE DEPARTMENTAL PURCHASE COMMITTEE MEETING DATED 16/08/2012.
- ANNEXURE A7 TRUE COPY OF THE TENDER NOTICE APPROVED BY THE THEN SECRETARY, DEPARTMENT OF PORTS, SHRI.MANOJ JOSHI IAS.

- ANNEXURE A8 TRUE COPY OF THE COMMUNICATION TO PUBLIC RELATIONS DEPARTMENT, BY THEN SECRETARY, DEPARTMENT OF PORTS, SHRI.MANOJ JOSHI IAS.
- ANNEXURE A9 TRUE COPY OF THE COMMUNICATION TO GOVERNMENT PRESS APPROVED BY THE THEN SECRETARY, DEPARTMENT OF PORTS DATED 15/11/11.
- ANNEXURE A10 TRUE COPY OF THE REPORT OF THE 3 MEMBER COMMITTEE OF THE LEGAL ADVISORS DATED 5/4/2019.
- ANNEXURE A11 TRUE COPY OF THE LIST OF OFFICERS INVOLVED IN THE PROCUREMENT PROCESS.
- ANNEXURE A12 TRUE COPY OF THE LETTER NO.58/E2/2019/F7PD DATED 8/3/2019 SEEKING REMARKS FROM THE DIRECTOR OF PORTS ON THE ALLEGATIONS ON PROCUREMENT OF THE DREDGER.
- ANNEXURE A13 TRUE COPY OF THE CORRESPONDENCES TO GOVERNMENT VIDE LR.NO.D1-3725/2010/DP DATED 20/01/2012 BY THE DEPARTMENT MENTIONING THAT THE PROCUREMENT WAS THROUGH GLOBAL E-TENDER.
- ANNEXURE A14 TRUE COPY OF THE LR.NO.D1-3725/2010/DP DATED 18/10/2012.
- ANNEXURE A15 TRUE COPY OF THE LR.NO.D1-3725/2010/DP DATED 01/11/2012.
- ANNEXURE A16 TRUE COPY OF THE REFERENCE NO.24862/G4/11/PR DATED 29/11/2011 OF THE ACKNOWLEDGMENT FROM PUBLIC RELATIONS DEPARTMENT.

- ANNEXURE A17 TRUE COPY OF THE LR.NO9.D1-3725/2010/DP DATED 31/12/2011 TO PUBLIC RELATIONS DEPARTMENT.
- ANNEXURE A18 TRUE COPY OF THE ACKNOWLEDGMENT LETTER FROM PUBLIC RELATIONS DEPARTMENT DATED 11/01/2012.
- ANNEXURE A19 TRUE COPY OF THE LR.NO.D1-3725/2010/DP DATED 30/01/2012 TO PUBLIC RELATIONS DEPARTMENT.
- ANNEXURE A20 TRUE COPY OF THE LR.NO.D1-3725/2010/DP DATED 30/01/2012 TO THE GOVERNMENT PRESS.
- ANNEXURE A21 TRUE COPY OF THE ADVERTISEMENT PUBLISHED BY PUBLIC RELATIONS DEPARTMENT IN A NATIONAL DAILY.
- ANNEXURE A22 TRUE COPY OF THE RELEVANT PAGE OF TE STORE PURCHASES MANUAL.
- ANNEXURE A23 TRUE COPY OF LR.NO.3725/2010/DP DATED 17/04/2012 REQUESTING THE GOVERNMENT TO ISSUE REVISED ADMINISTRATIVE SANCTION.
- ANNEXURE A24 TRUE COPY OF THE RELEVANT PAGE OF THE STORE PURCHASE MANUAL.
- ANNEXURE A25 TRUE COPY OF THE LETTER NO.06/CAMP/DVACB/2017 DATED 27/02/2017 SENT BY THE PETITIONER TO GOVT.OF INDIA.
- ANNEXURE A26 TRUE COPY OF THE ORDER OF COURT OF ENQUIRY COMMISSIONER & SPECIAL JUDGE (VIGILANCE), MUVATTUPUZHA IN CMP 56/2017 DATED 07.02.2017.

- ANNEXURE A27 TRUE COPY OF THE PETITION NO.JT/Port/111/2018 DATED 27.09.2018 SUBMITTED BEFORE THE FINANCE SECRETARY MR.MANOJ JOSHY IAS
- ANNEXURE A28 TRUE COPY OF THE REPLY OF FINANCE SECRETARY VIDE LETTER NO.IW-D-2/16/2018/FIN DATED 13.12.2018
- ANNEXURE A29 TRUE COPY OF THE PETITION NO.286 OF 2013 IN THE NATIONAL GREEN TRIBUNAL AND ORDER
- ANNEXURE A30 TRUE COPY OF THE G.O.(Rt) NO.978/2013/F & PD DATED 20.04.2013 FOR CONDUCTING RAPID EIA ASSESSMENT BY CWRDM
- ANNEXURE A31 TRUE COPY OF THE G.O.(Rt) NO.978/2013/F & PD DATED 28.11.2013 FOR CONDUCTING EIA STUDIES IN PORTS THROUGH KITCO
- ANNEXURE A32 TRUE COPY OF THE LETTER NO.C3-5093/2013/DP(2) DATED 30-01-2014 ADDRESSED TO THE DIRECTOR SEIAA SEEKING EIA CLEARANCE FOR AZHEEKAL PORT
- ANNEXURE A33 TRUE COPY OF THE LETTER NO.CE-5093/2013/DP DATED 30-01-2014 SEEKING EIA CLEARANCE FOR MANUAL DREDGING AT PONNANI PORT
- ANNEXURE A34 TRUE COPY OF THE NOTICE NO.228/SEIAA/KL/528/2014 DATED 1.2.2014 FROM SEIAA, INTIMATING THE ACCEPTANCE OF THE ITEM OF THE PROPOSAL OF EIA CLEARANCE FOR AZHEEKAL PORT
- ANNEXURE A35 TRUE COPY OF THE AFFIDAVIT FILED BY THE DEPARTMENT OF PORTS IN WP(C) NO.3085/2017 DATED 6.6.2017.

- ANNEXURE A36 TRUE COPY OF THE GOVT OF KERALA DECIDING TO RECAST THE MANUAL DREDGING POLICY VIDE G.O.(Ms.)2/2017/F & PD DATED 09.02.2017.
- ANNEXURE A37 TRUE COPY OF THE LETTER DATED 25.04.2017 BY SATHYANNARAVOOR TO CHIEF SECRETARY.
- ANNEXURE A38 TRUE COPY OF THE LETTER DATED 04.05.2017 BY SATHYAN NARAVOOR TO CHIEF SECRETARY
- ANNEXURE A39 TRUE COPY OF THE LETTER DATED 10.12.2018 BY SATHYAN NARAVOOR TO CHIEF SECRETARY
- ANNEXURE A40 TRUE COPY OF THE INSPECTION REPORT/VISITING REMARKS OF THE DIRECTOR OF PORTS DATED 27.08.2012 AT AZHEEKAL PORT
- ANNEXURE A41 TRUE COPY OF THE NOTICE NO.629/2012-4 DATED 1.9.2012 ISSUED BY SENIOR PORT CONSERVATOR TO MR.SATHYAN NARAVOOR'S SOCIETY.
- ANNEXURE A42 TRUE COPY OF THE G.O.(Rt) NO.304/2018/Co op DATED 17.05.2018 REITERATING THE FINDINGS IN THE AUDIT OF THE CO-OPERATIVE REGISTRAR IN THE SOCIETY OPERATED BY MR.SATHYAN NARAVOORAS GRAVE AND SERIOUS VIOLATIONS OF THE CO-OPERATIVE RULES AND GOVERNMENT DIRECTIONS IN SAND SALE.
- ANNEXURE A43 TRUE COPY OF THE G.O.(Rt) NO.241/2019/Co.Op DATED 30.03.2019 WITH OBSERVATIONS OF THE GRAVITY OF THE ILLEGAL ACTS OF MR.SATHYAN NARAVOOR.

- ANNEXURE A44 TRUE COPY OF THE LETTER OF MR.SATHYAN NARAVOOR DATED 29.09.2012 BEFORE THE PORT CONSERVATOR, NOT TO IMPLEMENT THE CWRDM SCIENTIFIC REPORT.
- ANNEXURE A45 TRUE COPY OF THE GOVERNMENT OF KERALA Lr.No.10554/C3/2005/F, CS & PD dated 14.11.2005 ADDRESSED TO THE CENTRAL VIGILANCE COMMISSIONER TO PROVIDE WHISTLE BLOWER PROTECTION
- ANNEXURE A46 TRUE COPY OF THE Lr.No.Con1/732/05/11405 DATED 29.11.2005 OF CVC TO CHIEF SECRETARY
- ANNEXURE A47 TRUE COPY OF THE CIRCULAR NO.30/2016 DATED 24.11.2016 OF VACB, FOR CAPACITY BUILDING OF WHISTLEBLOWERS
- ANNEXURE A48 TRUE COPY OF GO Rt No.16/2017/Vig.DATED 25.1.2017 BY THE GOVERNMENT FOR GIVING AWARD OF RS.5 LAKHS EACH TO CATEGORIES OF WHISTLEBLOWERS IN KERALA.
- ANNEXURE A49 TRUE COPY OF THE LETTER NO.KSMDCL/CSS-New CSD/2008 DATED 22.11.2009
- ANNEXURE A50 TRUE COPY OF THE NOTE FILED WITH PARA 69 OF THE FINANCE OFFICER RECOMMENDING RE-TENDER
- ANNEXURE A51 TRUE COPY OF THE NOTE FILE WITH PARA 102 OF THE FINANCE OFFICER
- ANNEXURE A52 TRUE COPY OF THE FINANCIAL BID SUBMITTED BY M/S.BEML dated 27.2.2012

- ANNEXURE A53 TRUE COPY OF THE FINANCIAL BID SUBMITTED BY M/S IHC MERWDE DATED 2.3.2012.
- ANNEXURE A54 TRUE COPY OF THE LETTER NO.D1-6350/18/DP DATED 28-03-2019 WRITTEN BY THE DIRECTORATE ON THE TOTAL AMOUNT PAID TO IHC
- ANNEXURE A55 TRUE COPY OF THE LETTER NO.D1-2946/2010 DP DATED 22.12.2011 WITH TENDER NOTICE OF TENDER NO.06/2011-12 DATED 22.12.2011, FOR PURCHASE OF CRANE
- ANNEXURE A56 TRUE COPY OF THE FINANCIAL BID FORMAT OF TENDER NO.6/2011-12 DATED 7.3.2012 FOR CRANE
- ANNEXURE A57 TRUE COPY OF THE AS GO Rt NO.871/11/F & PD DATED 21.12.2011 FOR THE PURCHASE OF CRANE
- ANNEXURE A58 TRUE COPY OF SUPPLY ORDER LETTER NO.D1-2946/2010/DP DATED 4-6-2012, TO A EUROPEAN FIRM LIEBHER AT RS.12.07 INCLUSIVE OF AMC CHARGES FOR FIVE YEARS
- ANNEXURE A59 TRUE COPY OF THE RELEVANT PAGE OF THE STORE PURCHASES MANUAL, REVISED EDITION, 2013 WITH RULE 9.65 MANDATING AMC AN EVALUATING CRITERION IN TENDER WITH NPV TO DECIDE L1.
- ANNEXURE 60 TRUE COPY OF THE NOTE FILE WITH PARAS 108 TO 118
- ANNEXURE A61 TRUE COPY OF THE NEXT DRAFT OF THE LETTER NO.D1-3725/2010/DP DATED 27.3.2012

- ANNEXURE A62 TRUE COPY OF THE GO (Ms) No.2/2016/f & PD DATED 20.01.2016 BARRING TWO INCREMENTS OF SHRI HARI ACHUTA VARRIER, THEN DY DIRECTOR OF PORTS ON THE BASIS OF CBI CASE
- ANNEXURE A63 TRUE COPY OF THE G.O.(Rt) No.70/2017/F & PD DATED 20-01-2017, SUSPENDING SHRI HARI ACHUTA VARRIER, THEN DY.DIRECTOR OF PORTS ON THE BASIS OF VIGILANCE CASE
- ANNEXURE A64 TRUE COPY OF THE REPORT NO.B2/1169/2019/DP DATED 30-04-2019 OF PORT DEPARTMENT.
- ANNEXURE A65 TRUE COY OF THE NOTICE DATED 15.7.2019 ISSUED BY THE DEPUTY SUPDT. OF POLICE VACB
- ANNEXURE A66 A TRUE COPY OF THE STATEMENT RECORDED BY THE INVESTIGATING OFFICER ON 19.06.2019
- ANNEXURE A67 A TRUE COPY OF THE LETTER NO.512/JT/Vig/2019 DATED 19.7.2019 TO DIRECTOR OF VIGILANCE
- ANNEXURE A68 TRUE COPY OF THE STATEMENT NO. 511/JT/2019 DATED 19.7.2019
- ANNEXURE A69 A TRUE COPY OF THE NOTICE DATED 19.07.2019 ISSUED BY THE DEPUTY SUPDT.OF POLICE VACB
- ANNEXURE A70 A TRUE COPY OF THE LETTER DATED 08.03.2019 ISSUED TO THE DIRECTOR OF PORTS THIRUVANANTHAPURAM BY THE PRINCIPAL SECRETARY TO GOVERNMENT

RESPONDENTS' ANNEXURES :

ANNEXURE R1(a): COPY OF THE ORDER NO.005CRD DATED 05.07.2007 OF CENTRAL VIGILANCE COMMISSION.

ANNEXURE R1(b): COPY OF EMAIL DATED 30.08.2011 SENT TO DIRECTOR OF PORTS FROM M/S IHC MERWEDE.

ANNEXURE R1(c): COPY OF THE RELEVANT PAGES OF THE STORE PURCHASE MANUAL, 6TH EDITION, 1989.

ANNEXURE R1(d): COPY OF DRAFT MINUTES DATED 02.03.2012.

ANNEXURE R1(e): COPY OF GENERAL CONDITIONS OF THE TENDER FOR THE PURCHASE OF CUTTER SUCTION DREDGER.

ANNEXURE R1(f): COPY OF THE PROPOSAL LETTER SENT BY M/S IHC MERWEDE HOLLAND DATED 02.03.2012.

ANNEXURE R1(g): COPY OF THE LETTER GIVEN TO M/S IHC MERWEDE HOLLAND ON 02.03.2012 BY THE PETITIONER.

ANNEXURE R1(h): COPY OF THE LETTER SENT TO PORT DIRECTORATE FROM M/S IHC MERWEDE HOLLAND ON 09.03.2012.

ANNEXURE R1(i): SPECIAL CONDITIONS OF THE TENDER FOR THE PURCHASE OF CUTTER SUCTION DREDGER.

ANNEXURE R1(j): COPY OF LETTER DATED 20.03.2012 SENT BY M/S IHC MERWEDE HOLLAND TO DIRECTOR OF PORTS.

ANNEXURE R1(k): COPY OF PARA 104 OF THE NOTE FILE REGARDING PURCHASE OF CUTTER SUCTION DREDGER.

ANNEXURE R1(l): COPY OF PARA 108 OF THE NOTE FILE REGARDING PURCHASE OF CUTTER SUCTION DREDGER.

ANNEXURE R1(m): COPY OF THE MINUTES OF THE TECHNICAL COMMITTEE MEETING HELD ON 02.03.2012.

ANNEXURE R1(n): COPY OF THE LETTER SENT BY THE PETITIONER TO GOVERNMENT ON 27.03.2012.

ANNEXURE R1(o): COPY OF THE JUDGMENT IN WP(C) NO. 5142/2017 DATED 04.04.2017.

ANNEXURE R3(1): TRUE COPY OF THE JUDGMENT DATED 6.10.2015 IN W.P.C NO.1694/2015

ANNEXURE R3(2): TRUE COPY OF THE NOTE ATTACHED TO THE REPORT I.e.FILE NO.IW D1/70/2016-F1

ANNEXURE R3(3): TRUE COPY OF THE INTERIM ORDER DATED 16.02.2017 IN W.P.C NO.5142 /2017

ANNEXURE R3(4): TRUE COPY OF THE INTERIM ORDER DATED 8.3.2017 IN W.P.C.NO.5142/2017

ANNEXURE R3(5): TRUE COPY OF THE ORDER DATED 23.03.2017 IN W.P.C.NO.5142/2017

ANNEXURE R3(6): TRUE COPY OF THE JUDGMENT DATED 23.4.4.2017 IN W.P.C.NO.5142/2017

ANNEXURE R3(7): TRUE COPY OF THE INTERIM ORDER DATED 09.11.2017 IN W.P.C.NO.1184/2017

ANNEXURE R3(8): TRUE COPY OF G.O.(Rt)NO.203/2018/Vig.DATED 27.11.2018

ANNEXURE R3(9): TRUE COPY OF THE RELEVANT PAGES OF THE SALE DEED NBO.1905/2001 DATED 12.11.2001

ANNEXURE R3(10): TRUE COPY OF THE ORDER DATED 26.09.2018

ANNEXURE R3(11): TRUE COPY OF THE PROCEEDINGS DATED 7.7.2017 OF THE CHIEF CONSERVATOR OF FORESTS, GOVERNMENT OF KARNATAKA.

ANNEXURE R3(12): TRUE COPY OF THE LETTER DATED 19.12.2016 ISSUED BY THE MINISTRY OF HOMES AFFAIRS, GOVERNMENT OF

INDIA.

ANNEXURE R3(13): TRUE COPY OF G.O.(P) NO.506/92/FIN DATED
20.08.1992

ANNEXURE R3(14): TRUE COPY OF THE CIRCULAR DATED
22.3.2003.

TRUE COPY

PS TO JUDGE