

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
Friday, the 13th day of August 2021 / 22nd Sravana, 1943
WP(C) NO. 14170 OF 2021(S)

PETITIONER:

JAFFER KHAN, AGED 52, S/O.OUKKAR HAJI, KARUVELIL HOUSE,
ARAKKAPPADI VILLAGE, VENGOLA P.O.-683 547.

RESPONDENTS:

1. STATE OF KERALA, REP. BY SECRETARY,
DEPARTMENT OF HOME AFFAIRS, GOVERNMENT SECRETARIAT,
TRIVANDRUM-695 001.
2. * THE SECRETARY, DEPARTMENT OF HOME AFFAIRS, (DELETED)
GOVERNMENT SECRETARIAT, TRIVANDRUM-695 001.
3. * THE ADDITIONAL SECRETARY, DEPARTMENT OF HOME AFFAIRS, (DELETED)
GOVERNMENT SECRETARIAT, TRIVANDRUM-695 001.
* RESPONDENT NOS.2 & 3 ARE DELETED FROM THE ARRAY OF PARTIES AS
PER ORDER DATED 22/07/2021 IN WPC.
4. THE STATE POLICE COMPLAINTS AUTHORITY, REP. BY CHAIRMAN,
COTTON HILL, VAZHUTHACAUD, TRIVANDRUM-695 014.
5. THE SECRETARY, THE STATE POLICE COMPLAINTS AUTHORITY,
COTTON HILL, VAZHUTHACAUD, TRIVANDRUM-695 014.
6. THE STATE POLICE CHIEF, KERALA STATE, POLICE HEAD QUARTERS,
VELLAYAMBALAM, TRIVANDRUM-695 010.

P.T.O.

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the respondents to complete the process of appointment of independent Chief Investigating Officer to assist the State Police Complaint Authority, in accordance with the notification under Exhibit P10 and the proceedings initiated there under, during the pendency of this writ petition, in the interest of justice.

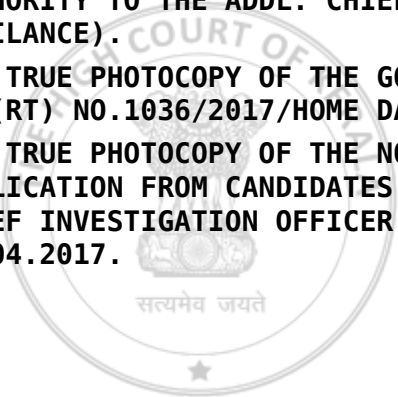
This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 22/07/2021 and upon hearing the arguments of M/S.PRAVEEN K.JOY, T.A.JOY, E.S.SANEEJ, M.P.UNNIKRISHNAN, M.K.SAMYUKTHA, N.ABHILASH & DEEPU RAJAGOPAL, Advocates for the petitioner, SRI.ARAVINDA KUMAR BABU, SENIOR GOVERNMENT PLEADER for R1 & R4 to R6 and of SRI.V. MANU, SENIOR GOVERNMENT PLEADER, the court passed the following:

P.T.O.



APPENDIX OF WP(C) 14170/2021

- Exhibit P1** THE TRUE PHOTOCOPY OF THE GOVERNMENT ORDER WITH NUMBER GO(RT) NO.1287/2015/HOME DATED 30.05.2015.
- Exhibit P2** THE TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE CHAIRMAN OF STATE POLICE COMPLAINTS AUTHORITY TO THE HOME SECRETARY, GOVERNMENT OF KERALA DATED 31.12.2015.
- Exhibit P3** THE TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE CHAIRMAN OF STATE POLICE COMPLAINTS AUTHORITY TO THE ADDL. CHIEF SECRETARY (HOME AND VIGILANCE) DATED 03.02.2016.
- Exhibit P4** THE TRUE PHOTOCOPY OF THE GOVERNMENT ORDER WITH NUMBER GO(RT) NO.833/2016/HOME DATED 03.03.2016.
- Exhibit P5** THE TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE CHAIRMAN OF STATE POLICE COMPLAINTS AUTHORITY TO THE ADDL. CHIEF SECRETARY (HOME AND VIGILANCE), GOVERNMENT OF KERALA DATED 10.03.2016.
- Exhibit P6** THE TRUE PHOTOCOPY OF THE GOVERNMENT ORDER WITH NUMBER GO(RT) NO.1624/2016/HOME DATED 18.05.2016.
- Exhibit P7** THE TRUE PHOTOCOPY OF THE GOVERNMENT ORDER WITH NO.42805/SSA5/2016/HOME DATED 07.06.2016.
- Exhibit P8** THE TRUE PHOTOCOPY OF THE LETTER DATED 03.02.2017 ISSUED BY THE CHAIRMAN, STATE POLICE COMPLAINTS AUTHORITY TO THE ADDL. CHIEF SECRETARY (HOME AND VIGILANCE).
- Exhibit P9** THE TRUE PHOTOCOPY OF THE GOVERNMENT ORDER WITH NUMBER GO (RT) NO.1036/2017/HOME DATED 25.04.2017.
- Exhibit P10** THE TRUE PHOTOCOPY OF THE NOTIFICATION INVITING APPLICATION FROM CANDIDATES TO BE APPOINTED AS THE CHIEF INVESTIGATION OFFICER (CIO-SPCA) DATED 17.04.2017.



**S. MANIKUMAR, CJ
&
SHAJI P. CHALY, J**

WP(C). No. 14170 of 2021 (S)

Dated this the 13th day of August, 2021

ORDER

S. Manikumar, CJ.

Petitioner has sought for the following reliefs:

"I. issue writ, order or direction in the nature of mandamus or any other appropriate writ directing the respondents to implement strictly and in its full spirit, the provisions of the Government orders for appointment of independent Chief Investigating Officer (CIO-SPCA) to assist the State Police Complaint Authority, in the interest of justice.

ii. To direct the 1st respondent to complete the process of appointment of independent Chief Investigating Officer to assist the State Police Complaint Authority, in accordance with the notification under Exhibit-P10 and the proceedings initiated thereunder."

2. Short facts leading to filing of the writ petition are that the petitioner herein is the Advisory committee member of RAF (Road Accident Forum), for the State of Kerala. The petitioner is also a Human right protection activist and was the earlier president of Perumani Muslim Jamath Committee. The petitioner approached this Court to represent the grievance with regard to the appointment of a "non-police independent investigating officer, namely, the Chief Investigation Officer (CIO) as State Police Complaints Authority (SPCA). It is submitted that there were several Government notifications published for the recruitment of a Chief Investigation

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Officer (CIO) of the State Police Complaints Authority (SPCA) in Kerala. However the same has not been implemented in an effective manner since 2016. The Kerala Police Act 2011 in its section 110 provides for the constitution of a Police Complaints Authority. Under the said provision two different committees are to be formed namely, The State Police Complaint Authority and The District police complaint Authority. The very purpose of the authority is for examining and inquiring into the complaints on all types of misconduct against police officers of and above the rank of Superintendent of Police. The main aim of such authorities is for getting in the mind of the public that, "Doors of the Justice" are not fully denied to them, even though a number of grave human right violations are reported through the actions of some officials.

3. In exercise of the powers conferred, the State Government issued several orders and notifications, with regard to the appointment of Chief Investigation officer, as is evident from Exhibits P1 to P10. The complaints are expected to be disposed of after following a detailed procedure, including an opportunity of hearing to the offender and the complainant. A police officer is supposed to discharge his functions and duties, in accordance with law existing in the country and with utmost care and responsibility. The matter covered under Exhibit-P8 letter, states that the appointment of

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private investigating officer, is having great significance. Therefore, due consideration was given by the Government to the said proposal. Accordingly, a fresh Government order was issued with a further clause that, "those officers who have worked in the rank of Superintendent of Police in the Central Investigation Agencies like Central Bureau of Investigation (CBI), National Investigation Agency (NIA) etc. and not served in Kerala Police are eligible for appointment".

4. The investigation is an art that needs to be studied scientifically and since the matter is criminology, it is a criminologist, who has to deal with criminal investigation. Since the issuance of the very first Government order with regard to the appointment of the Chief Investigation Officer as State Police Complaint Authority, the State had witnessed a number of incidents for the brutality and misconduct of the police officials. A number of "custodial deaths" were reported during this whole period. The dependents of the persons who were subjected to custodial death by the police officials in an inhuman and brutal manner are still wandering for justice. One of the heart breaking incidents was reported at Varapuzha Police Station which leads to the brutal murder of youngster named "Sreejith" in police custody. Later the death of an entrepreneur of a company named Haritha Finance was brutally tortured in custody

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and later died. Likewise a number of incidents were reported. The petitioner prays for urgent orders from this court including directions to the Government to take urgent actions for appointing a duly qualified non-police independent investigation expert as Chief Investigation Officer at SPCA. The voluntary appointment of the ACS (Home and Vigilance) as the Chairman of the recruitment committee by himself and the appointment of ADGP from the State police as the government nominee call into question the independence and transparency of the selection process. There is every chance that the matter will be further delayed if directions are not issued from this Court. Therefore, urgent interference is necessary from this Court. Unless directions are issued, irreparable injury and loss would be occasioned to the public at large. The petitioner left with no other effective alternative remedy is forced to approach this Honourable Court. Hence this writ petition is filed.

5. On this day when the matter came up for hearing, based on the statement dated 13.08.2021 filed by the Secretary, Department of Home Affairs, Mr. V. Manu, learned Senior Government Pleader, submitted that steps have been taken by Government of Kerala, for appointing Chief Investigation Officer to assist Police Complaint Authority. He further submitted that after taking up the process, short listed candidates were called for interview on 26.7.2021 before

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the selection committee constituted for selecting the Chief Investigating Officer. But one of the nominees of the Chairman, SPCA, could not attend the selection process and hence an interview was postponed.

6. Mr. V. Manu, learned Senior Government Pleader, further submitted that after reconstitution of the selection committee by the Chairman, SPCA, the process will continue. Steps taken by the Government for filling up of the post, as deduced from the statement are as under:

"3. As per Government Order, G.O.(Rt)No.475/2012/Home dated 17.02.2012, the Government of Kerala constituted the State Police Complaints Authority ("SPCA"), by appointing its Chairperson and Members, in accordance with the provisions of Section 110 of the Kerala Police Act, 2011. As per Exhibit P1 G.O.(Rt)No.1287/2015/Home dated 30.05.2015, the Government accorded sanction to create an investigation team for SPCA, with retired personnel from All India Service or Central Government Services working on pro bono basis.

4. The Chairman of the SPCA, as per Exhibit P2 letter dated 31.12.2015, submitted a proposal for appointment of an independent individual as the Chief Investigation Officer ("CIO"), instead of an investigation team, to enquire into allegations of misconduct against erring police officers and to conduct field enquiry with respect to the complaints filed before it. The proposal was silent on the already sanctioned creation of an investigation team for the Authority. The Government, as per letter dated 01.02.2016, requested the Chairman, SPCA to clarify regarding the steps taken in pursuance of the earlier Government Order (Exhibit P1) and to furnish the details regarding financial implications on the appointment of CIO. The Chairman, SPCA informed the Government that the financial burden of the State could be scaled down by limiting the appointment to that of a CIO only and the appointment could be on contract basis for a period of 2 to 3 years, on a consolidated monthly payment of Rs. 50,000/-. The proposal was found to be reasonable and justifiable, as the appointment of a CIO, accountable only to the SPCA, was very

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essential for its efficacious functioning. The Government, therefore, as per Exhibit P4 G.O.(Rt)No. 833/2016/Home dated 03.03.2016, accorded sanction to appoint a CIO for SPCA on contract basis (not eligible for regularisation) for a period of one year on a consolidated monthly payment of Rs. 50,000/-, subject to the condition that the officer would be in the rank of Deputy Superintendent of Police. Certain conditions of service, method/manner of selection etc. were also specified in that order as hereunder:

"Specific qualification and criteria for selection for the appointment of the CIO shall be fixed in advance and shall be got approved by the Authority. Wide publicity shall be given for the selection. Notices inviting applications for the post of CIO shall be given at least in two dailies."

5. Accordingly, a draft notification was prepared by the Home Department for inviting applications for the post of CIO. As per Exhibit P3 letter dated 10.03.2016 the Chairman, SPCA, submitted a proposal for modification of certain conditions in the above order regarding the appointment of CIO. As per Exhibit P6 Government Order, G.O.(Rt)No. 1624/2016/Home dated 18.05.2016, certain service conditions and method of selection were modified as follows:-

"The appointment of Chief Investigation Officer will be on contract basis for a period of one year on a consolidated monthly payment of Rs. 75,000/- and the officer will be in the rank of Superintendent of Police. Also the appointment of CIO shall be in consultation with the Chairman, SPCA. "

6. Consequent to the issuance of Exhibit P6 order, the then Chairman of SPCA, as per letter dated 23.05.2016, forwarded draft notification for the post of CIO incorporating specific qualification, criteria for selection etc. Accordingly, as per letter dated 07.06.2016, the Government approved the draft notification and requested and requested the Authority to proceed further in this regard. Again, as per the letters dated 25.06.2016 and 06.02.2017, the Chairman, SPCA sought some clarifications on the mode of appointment, criteria for selection, method, mode of selection etc. of CIO. Government re-examined the matter in the light of that request and issued Exhibit P9 G.O.(Rt) No.1036/2017/Home dated 25.04.2017. As per the above order, certain conditions were modified as under-

"Those officers who have worked in the rank of Superintendent of Police in the Central Investigation Agencies like CBI, NIA etc. and not served in Kerala Police are eligible for appointment.

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The selection of CIO will be done by a committee of three members headed by the Additional Chief Secretary (Home and Vigilance), a nominee of the Chairman, SPCA and a Government nominee. A Degree in Law must be included as a desirable qualification. Other desirable qualifications and criteria for selection for the appointment of the CIO shall be fixed in advance and shall be approved by the Authority".

Consequently as per letter dated 21.11.2017, Secretary, SPCA forwarded the draft notification and Government approved the draft notification with slight modification on 12.12.2017 and, as per letter dated 16.12.2017, directed the SPCA to proceed further in this regard by publishing the notification/ advertisement in leading dailies/visual media.

7. The Secretary, SPCA, as per his letter dated 25.01.2018, requested clarifications on the modifications made on the draft notification. As per letter dated 17.07.2018, Government informed the Secretary, SPCA that only slight changes were made by the Government in the draft notification furnished by SPCA and that no fundamental changes were made. As per the letter dated 11.01.2019, Government had requested SPCA to furnish a report on the steps taken for the appointment of CIO. As per the letter dated 22.05.2019, Secretary, SPCA had informed that the authority published the notification in leading dailies/visual media on 12.03.2019. The last date for submitting the application was 30.04.2019. 3 applications received against the notification were also submitted by the Authority.

8. Based on the conditions laid down in G.O.(Rt) No.1036/2017/Home dated 25.04.2017, Government constituted a three member committee for the selection of Chief Investigation Officer vide G.O. (Rt)No.2235/2019/Home dated 20.08.2019 consisting of the following:- Additional Chief Secretary, Home Department (Head of the Committee), Sri. K. Chenthamarakshan, Retd. District Judge (Nominee of the Chairman, SPCA) and Smt. R. Sreelekha IPS, Additional Director General of Police (Nominee of the Government). A true photocopy of G.O.(Rt) No.2235/2019/Home dated 20.08.2019 is produced herewith as Annexure-R1(a).

9. The Selection committee meeting was held on 19.09.2019. The Selection Committee found that none of the 3 applicants were eligible to the said post as they did not possess the required essential educational qualification/experience. The Selection Committee also decided that the Government would have to advertise the notification

again to get a fair list of candidates. Draft notification was approved on 23.09.2019 and the same was advertised through the Government website and two leading English and Malayalam Dailies. Last date for submitting the application was on 23.10.2019. A true photocopy of the Notification dated 23.09.2019, issued with regard to the selection of the Chief Investigating Officer, State Police Complaints Authority, is produced herewith as Annexure-R1 (b).

10. A total of 9 applications were received by the Government against the notification. On 28.05.2020, the Government after considering the necessity of appointing staff which requires for the urgent functioning of the Authority, re-looked on the necessity for the post of CIO in SPCA and requested the Secretary, SPCA to furnish the necessity for the post of CIO. The Secretary, SPCA, as per letter dated 21.10.2020, informed the Government that the appointment of CIO was essential for the smooth, efficacious and independent functioning of the Authority and requested to continue with the steps for the selection of CIO, already commenced.

11. As one of the Selection Committee members, Smt. R. Sreelekha IPS retired from service, the Committee was reconstituted by replacing her with another Government nominee, Sri. Vijay S. Sakhare IPS, Additional Director General of Police, as per order G.O. (Rt)No.209/2021/Home dated 20.01.2021. A true photocopy of the G.O.(Rt)No. 209/2021/Home dated 20.01.2021 is produced herewith as Annexure-R1 (C).The selection process was further delayed due to modal code of conduct during the Legislative Assembly Elections, 2021.

12. All the 9 applications received. against the notification were scrutinized. 7 applicants were found ineligible, as they did not have essential educational qualification/experience and such applications were rejected. Two applicants were shortlisted. The shortlisted applicants were called for an interview on 26.07.2021 before the selection committee. Due to age related problems and COVID-19 restrictions, one of the committee members, who was the nominee of the Chairman, SPCA, informed that he would not be able to attend the selection process, and hence the Interview was postponed. The fresh date of selection process of the post will be decided only after reconstitution of the selection committee after obtaining fresh nomination from the Chairman, SPCA.

13. In view of Annexure-R1(b) notification, Exhibit P10 notification is no longer relevant."

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7. In as much as the process is nearing completion, Secretary to the Government, Department of Home/respondent No.1 is directed to speed up the reconstitution of the selection committee and finalise the selection to the post of Chief Investigating Officer, within a period of three weeks from today.

8. Mr. V. Manu, learned Senior Government Pleader, is directed to communicate the orders of this Court to respondent No.1, for appropriate action.

Post this matter after three weeks.



Sd/-

S. Manikumar,
Chief Justice

Sd/-

Shaji P. Chaly,
Judge

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