

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHI

&

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

TUESDAY, THE 23RD DAY OF JULY 2019 / 1ST SRAVANA, 1941

WP(C).No.1314 of 2016

PETITIONER :

M/S MALABAR CEMENTS LTD., VALAYAR, PALAKKAD  
REPRESENTED BY ITS DEPUTY GENERAL MANAGER,  
MR.N.SRINIVASAN.

BY ADVS.  
SRI.K.ANAND (SR.)  
SMT.LATHA ANAND

RESPONDENTS :

- 1 SHRI K.BABURAJAN  
"VADAKKATH", PUNNAKKULAM, K.S.PURAM (PO), PIN-  
690 544, KARUNAGAPPALLY, KOLLAM DISTRICT.
- 2 KERALA STATE HUMAN RIGHTS COMMISSION  
TURBO PLUS TOWER, PMG JUNCTION, VIKAS BHAVAN PO,  
THIRUVANANTHAPURAM-695 033.

ADDL.R3 IS IMPLEADED

ADDL.R3 STATE OF KERALA  
REPRESENTED BY ITS CHIEF SECRETARY TO  
GOVERNMENT, SECRETARIAT, THIRUVANANTHAPURAM-  
695001.

IS IMPLEADED AS PER ORDER DATED 16.09.2017 IN  
I.A NO.14422/2017.

BY ADVS.

R1 SRI.P.V.VENUGOPAL  
ADDL.R3 GOVERNMENT PLEADER SRI S KANNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
23.07.2019, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**"C.R"**

**C.K. ABDUL REHIM  
&  
R. NARAYANA PISHARADI, JJ.**

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W.P (C) No. 1314 of 2016  
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*Dated this the 23<sup>rd</sup> day of July, 2019*

**JUDGMENT**

**Narayana Pisharadi,J**

Challenge in this writ petition filed by M/s Malabar Cements Limited (hereinafter referred to as 'the company') is directed against Ext.P8 order passed by the Kerala State Human Rights Commission (for short 'the Commission') directing the company to appoint the first respondent as Mazdoor in the company.

2. The facts, in brief, are as follows: The company conducted selection for appointment to the post of Mazdoor. The first respondent, who was an applicant to the post, failed in the physical fitness test conducted by the company and therefore, he was not selected for appointment. The first respondent had filed W.P.(C) No. 8125/2005 before this Court challenging the selection process. The aforesaid writ petition was disposed of by this Court as per Ext.P1 judgment dated 07.02.2008, directing the company to consider the first respondent also to the post of Mazdoor as and

when vacancy arises, provided he made application pursuant to the notification issued in that behalf and subject to his possession of qualification and eligibility.

3. Meanwhile, as per the order of this Court in W.P.(C) No. 2074/2007, a vigilance enquiry was conducted regarding the corrupt practices allegedly took place in the appointments made in the company. The first respondent submitted Ext.P3(2) representation dated 02.08.2012 to the Government praying that steps may be taken to give direction to the company to appoint him as Mazdoor. Such a representation was made by him on the basis that, in the physical fitness test conducted during the vigilance enquiry, he was found qualified. The Government forwarded the aforesaid representation to the company seeking a report. The company sent Ext.P4 reply to the Government pointing out Ext.P1 judgment of this Court in the matter. The company sent a further reply as Ext.P5 to the Government enclosing therewith a copy of the resolution passed by the Board of Directors to the effect that the first respondent was not qualified for appointment as Mazdoor.

4. The first respondent filed Ext.P6 petition dated 11.09.2014 before the Commission praying that steps may be

taken for giving him appointment as Mazdoor in the company. It appears that the Commission sought a report from the company on his petition and the company sent Ext.P7 reply to the Commission referring to Ext.P1 judgment of this Court and also informing the Commission regarding the decision taken by the Board of Directors in the matter. As per Ext.P8 order dated 04.08.2015, the Commission directed the company to reconsider its decision and to appoint the first respondent as Mazdoor. The aforesaid order is challenged in this writ petition.

5. The first respondent has filed a detailed counter affidavit in the writ petition. The emphasis in the counter affidavit is with respect to the corrupt practices that took place in the appointments made in the company and also with regard to his success in the physical fitness test which was conducted by the vigilance officials during the enquiry.

6. We have heard the learned counsel for the petitioner and the first respondent and also the learned Government Pleader.

7. The first respondent had challenged the selection process to the post of Mazdoor in W.P.(C) No.8125/2005 filed by him. Ext.P1 is the copy of the judgment in that writ petition. It is a short judgment and it is extracted below in its entirety.

*"Having heard the counsel on both sides and having perused the averments in the writ petition, the only direction that could be passed, at this stage, is one to the 2<sup>nd</sup> respondent to consider the petitioner to be posted as Mazdoor as and when there is a notification in future.*

*In the result, this writ petition is disposed of directing the 2<sup>nd</sup> respondent to consider the petitioner also to the post of Mazdoor as and when the vacancy arises, provided he applies pursuant to the notification issued in that behalf subject to his possession of qualification and eligibility, as early as possible."*

8. Admittedly, the first respondent did not file any appeal or review against Ext.P1 judgment and it has attained finality. There is also no dispute with regard to the fact that no selection to the post of Mazdoor was conducted in the company after Ext.P1 judgment.

9. The question whether the first respondent has got any right to get appointment as Mazdoor in the company had got crystallized as per Ext.P1 judgment. It is seen that, in Ext.P6 petition filed by the first respondent before the Commission, he had made no reference to Ext.P1 judgment. However, in Ext.P7 report submitted by the company to the Commission on the petition filed by the first respondent, reference is made to Ext.P1 judgment. But,

Ext.P8 order passed by the Commission does not make any reference at all to Ext.P1 judgment.

10. Can the Commission make any recommendation or direction which would have the effect of nullifying the spirit of Ext.P1 judgment of this Court? We shall consider this question with reference to the provisions contained in the Protection of Human Rights Act, 1993 (hereinafter referred to as 'the Act').

11. Section 2(d) of the Act defines 'Human Rights' as follows:

*"Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India."*

12. Section 12 of the Act deals with the functions of the National Human Rights Commission. By virtue of Section 29 of the Act, the provisions contained in Section 12 of the Act are applicable to State Human Rights Commission also. Section 12(a) of the Act provides that the Commission shall inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, or on a direction or order of any court into complaint of - (i) violation of human rights or abetment thereof or (ii) negligence in the

prevention of such violation, by a public servant. Section 12(b) of the Act provides that the Commission shall intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court. Section 12(d) of the Act states that the Commission shall review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation. Section 12(j) of the Act states that the Commission shall perform such other functions as it may consider necessary for the promotion of human rights.

13. Section 18(a)(iii) of the Act provides that, where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority to take such further action as it may think fit. Section 18(e) of the Act provides that the commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month or such further time as the Commission may allow,

forward its comments on the report, including the action taken or proposed to be taken thereon to the Commission.

14. The Act has been enacted to provide for better protection of human rights by constituting a National Human Rights Commission and also State Human Rights Commissions and Human Rights Courts. Even if it is accepted that the denial of employment to the first respondent in the company amounts to violation of human rights, the question is whether the Commission could have passed Ext.P8 order by overturning the decision rendered by this Court in the matter as per Ext.P1 judgment.

15. The Commission is a statutory body created under the Act. It does not have any plenary or prerogative powers like the High Court. It exercises only statutory powers. The Commission is, no doubt, entrusted with the very important function of protecting human rights. But the Commission has no unlimited jurisdiction. It cannot exercise plenary powers in derogation of the statutory limitations. The Commission, which is the creature of a statute, is bound by its provisions. Its duties and functions are defined and circumscribed by the Act. The Commission should necessarily act within the parameters prescribed by the Act. The Commission is one of the fora which can redress grievances arising out of



violations of human rights. It is to be remembered that, even if the Commission is not in a position to enquire into a complaint and to afford redressal on account of statutory fetters or handicaps, the aggrieved persons are not without other remedies (See **Dhondial v. Union of India : AIR 2004 SC 1272**).

16. In **Remdeo Chauhan v. Bani Kanta Das : AIR 2011 SC 615**, the Supreme Court has explained the scope of the definition of 'human rights' given in Section 2(d) of the Act. The Apex Court elaborately dealt with the concept of human rights and held that the definition of 'human rights' in the Act has to be interpreted in a broad manner to encompass within it all the rights relating to life, liberty, equality and dignity of an individual guaranteed by the Constitution. The Apex Court also held that there can be violation of a person's human rights by a judgment of a court. However, the Apex Court has put in a word of caution as follows:

*"But we hasten to add that NHRC cannot function as a parallel seat of justice to rectify or correct or comment upon orders passed by this Court or any other Courts of competent jurisdiction. For correcting an order in a judicial proceeding, the aggrieved party has to avail of the well established gamut of the corrective machinery of appeal, revision, review, curative petition and so on".*

17. In **Remdeo Chauhan** (supra), the Apex Court has categorically held that the Commission cannot function as a parallel seat of justice to rectify or correct or comment upon any order passed by any court of competent jurisdiction. Therefore, Ext.P8 order passed by the Commission is liable to be quashed, solely on the ground that it tends to interfere with Ext.P1 judgment passed by this Court in the same matter between the same parties.

18. At this juncture, we may take note of Regulation 17 of the Kerala State Human Rights Commission (Procedure) Regulations, 2001 which deals with maintainability of complaints before the Commission. Regulation 17 states that, the Commission may dismiss in limine complaints of the nature enumerated in clauses (a) to (l). Clause (f) of Regulation 17 provides that, the Commission may dismiss in limine, complaints wherein the issue raised relates to civil disputes, service matters, labour or industrial dispute. Clause (i) of Regulation 17 provides that, the Commission may dismiss in limine complaints, if the matter is covered by a Judicial verdict/decision of the National Commission or a State Commission. Similarly, going by clause (l), the Commission may dismiss the complaints in limine, where the matter raised is outside the purview of the Commission or on any other ground.

19. Clause (f) of Regulation 17 specifically provides that, the Commission may dismiss in limine a complaint, if the issue raised relates to service matters. The issue raised by the first respondent in Ext.P6 petition relates to his appointment as a Mazdoor in the company and it is a service matter. The Commission should have dismissed the complaint in limine especially in the light of Ext.P1 judgment of this Court in the same matter between the same parties, which had attained finality.

20. Of course, Ext.P8 order refers to the vigilance enquiry conducted, as per the order of this Court in a writ petition, with regard to the corrupt practices taken place in the appointments made in the company. Ext.P8 order also refers to the fact that the first respondent had got qualified in the physical fitness test conducted during the vigilance enquiry. In view of Ext.P1 judgment of this Court, these are matters which could not have been considered by the Commission in passing Ext.P8 order to give appointment to the first respondent as Mazdoor in the company.

21. The upshot of the discussion above is that, Ext.P8 order passed by the Commission, which totally ignores Ext.P1 judgment rendered by this Court in the same matter between the same parties, and which is in conflict with that judgment, is not

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sustainable in law.

Consequently, the writ petition is allowed and Ext.P8 order is hereby quashed. No costs.

**Sd/-C.K.ABDUL REHIM  
JUDGE**

**Sd/-R.NARAYANA PISHARADI  
JUDGE**

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RESPONDENT'S/S EXHIBITS:

- EXHIBIT R1 (A) TRUE COPY OF COMMUNICATION PRINCIPAL SECRETARY TO GOVERNMENT THAT GOVERNMENT HAD DECIDED TO CONDUCT VIGILANCE ENQUIRY IN TERMS OF W.P. (C) NO. 2074/2007 DATED 04.06.2007.
- EXHIBIT R1 (B) TRUE COPY OF RELEVANT EXTRACT IN PAGE NO.18 OF VIGILANCE REPORT NO.VE15/2007/PKD DATED 30.01.2010 FILED BY DEPUTY SUPERINTENDENT OF POLICE VIGILANCE AND ANTI-CORRUPTION BUREAU NR-KOZHIKODE OBTAINED UNDER RIGHT TO INFORMATION ACT.
- EXHIBIT R1 (C) A TRUE COPY OF RELEVANT EXTRACT OF STATEMENT INDICATING THAT DR.K.HARIDAS WITNESS NO.48 HAD NOT ATTENDED PRE-MEDICAL EXAMINATION AND PHYSICAL FITNESS TEST IN VIGILANCE REPORT NO.VE 15/2007/PKD DATED 30.01.2010 OBTAINED UNDER RIGHT TO INFORMATION ACT.
- EXHIBIT R1 (D) A TRUE COPY OF RELEVANT EXTRACT OF IN VIGILANCE REPORT NO.VE 15/2007/PKD DATED 30.01.2010 INCLUDING STATEMENT INDICATION THAT AYYAPPAN WHO IS EXAMINED AS WITNESS 44 HAD NOT ATTENDED PRE-MEDICAL EXAMINATION AND PHYSICAL FITNESS TEST OBTAINED UNDER RIGHT TO INFORMATION ACT.
- EXHIBIT R1 (C) A TRUE COPY COMMUNICATION NO.14348/H2/2012/ID DATED 22/12/2012 ISSUED BY ADDITIONAL CHIEF SECRETARY TO GOVERNMENT.
- ADDITIONAL EXHIBIT R1 (G) TRUE COPY OF LETTER ISSUED BY GOVERNMENT BEARING NO.26476/H2/2015 ID DATED 05.02.2016 CALLING UP ON PETITIONER TO IMPLEMENT THE ORDER ISSUED BY 2ND RESPONDENT HUMAN RIGHTS COMMISSION.
- ADDITIONAL EXHIBIT R1 (H) TRUE COPY OF LETTER ISSUED BY PETITIONER MCL/RTI/30/2014 DATED 18/07/2014 INTIMATING THE FACT THAT DIRECTOR BOARD MEETING OF MALABAR CEMENTS HELD AS ON

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28/06/2014 HAD NOT DISCUSSED THE ISSUE  
SUBJECTING PETITIONER BABURAJAN.

ADDITIONAL EXHIBIT  
R1 (I)

TRUE COPY OF LETTER ISSUED BY PETITIONER  
MCL/RTI/49/9201 DATED 02/10/2014  
INTIMATING THE FACT THAT DIRECTOR BOARD  
MEETING OF MALABAR CEMENTS HELD AS ON  
28/06/2014 HAD DISCUSSED THE ISSUE  
SUBJECTING PETITIONER BABURAJAN BUT  
ADVERSE DECISION IS TAKEN UP.

TRUE COPY

P.A TO JUDGE

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