IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MR.JUSTICE N.ANIL KUMAR

MONDAY, THE 10TH DAY OF FEBRUARY 2020/ 21ST MAGHA, 1941

WP(C).No.22684 OF 2014(I)

CC NO.12/2014 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE,KOZHIKODE

PETITIONER:

K.KARUNANIDHI,AGED 50 YEARS,
S/O. KRISHNAN,
S.K. BHAVAN, VENKULAM, EDAVA.P.O.,THIRUVANANTHAPURAM.

BY ADVS.
SRI.D.KISHORE
SMT.MINI GOPINATH

RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

2 THE PRINCIPAL SECRETARY TO GOVERNMENT,
HOME DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.

3 THE PRINCIPAL SECRETARY TO GOVERNMENT,
VIGILANCE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.

4 THE DIRECTOR,VIGILANCE AND CORRUPTION BUREAU,
STATE OFFICE, PMG, VIKAS BHAVAN, THIRUVANANTHAPURAM-695036.

5 THE STATE POLICE CHIEF
POLICE HEADQUARTERS, THIRUVANANTHAPURAM.

6 THE DEPUTY SUPERINTENDENT OF POILCE
VIGILANCE AND ANTI CORRUPTION BUREAU,
KOZHIKODE UNIT-673509.

7 HARIS,S/O. ABDULLAH,MEETHALETHAYYULLATHIL HOUSE, KALLUMMAL PALLI, CHEKKIYADU VILLAGE, CHEKKIYADU.P.O., KOZHIKODE-673509.

R1 TO R6 BY SRI.SUMAN CHAKRAVARTHY, SENIOR GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-11-2019, ALONG WITH WP(C).18325/2015(M), THE COURT ON 10-02-2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MR.JUSTICE N.ANIL KUMAR

MONDAY, THE 10TH DAY OF FEBRUARY 2020 / 21ST MAGHA,1941

WP(C).No.18325 OF 2015(M)

CC NO.45/2014 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE,KOTTAYAM

PETITIONER:

**K.T.MOHANAN,AGED 43 YEARS,S/O.THANKAPPAN,
KARAMALIL HOUSE, CHERUTHONI, KSEB QUARTERS
NO.F 25D, IDUKKI.**

**BY ADVS.
SRI.D.KISHORE
SMT.MINI GOPINATH
SMT.MEERA GOPINATH**

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RESPONDENTS:

1. **STATE OF KERALA REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001**

2. **THE PRINCIPAL SECRETARY TO GOVERNMENT, HOME DEPARMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001**

3. **THE PRINCIPAL SECRETARY TO GOVERNMENT, VIGILANCE DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001**

4. **THE DIRECTOR,VIGILANCE AND ANTI CORRUPTION BUREAU, STATE OFFICE, PMG, VIKAS BHAVAN, THIRUVANANTHAPURAM-695036**

5. **THE STATE POLICE CHIEF, POLICE HEADQUARTERS, THIRUVANANTHAPURAM-695001**

6 THE DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI CORRUPTION BUREAU,
IDUKKI UNIT

R1 TO R6 BY SRI.SUMAN CHAKRAVARTHY,
SENIOR GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-11-2019, ALONG WITH WP(C).22684/2014(I), THE COURT ON 10-02-2020 DELIVERED THE FOLLOWING:

"C.R."

A.HARIPRASAD & N.ANIL KUMAR, JJ.

W.P.(C) Nos.18325 of 2015
&
22684 of 2014

Dated this the 10th day of February, 2020

COMMON JUDGMENT

Hariprasad, J.

Legal questions having profound and radical consequences commonly raised in these writ petitions are thus:

(I) Whether the Vigilance and Anti Corruption Bureau (in short, "VACB") is a police force constituted under the State Government's legislative power conferred by List II of the 7th Schedule to the Constitution of India and do they have any lawful authority to register first information reports (FIR), investigate crimes, submit charge sheets and prosecute the alleged offenders?

(II) Whether the executive functionaries of the State Government have power to create a Vigilance Department without any statutory support?

(III) Does the exercise of such powers infringe the fundamental rights of citizens, enshrined in Part III of the Constitution of India, especially the one under Article 21?

(IV) Whether Rule 4 of the Kerala Civil Services (Vigilance Tribunal)

Rules, 1960 is ultra vires of the Constitution?

2. Petitioners are the accused in two separate cases registered under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. 1988 (in short, “PC Act”). Exts.P1 and P2, in both the writ petitions, are the first information reports and final reports submitted against the petitioners.

3. These writ petitions came up initially before a learned single Judge. In terms of an order passed by the learned single Judge on 02.03.2015, the Registry, after taking orders from the Hon'ble Chief Justice, placed these matters before us for adjudication.

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4. Heard Shri D.Kishore, learned counsel for petitioners and Shri Suman Chakravarthy, learned Senior Government Pleader for the State Government.

5. Allegations against the petitioner in W.P.(C) No.22684 of 2014 are that while working as Village Officer (undoubtedly a public servant), he abused his official position by demanding illegal gratification of ₹15,000/- from the 7th respondent for receiving land tax for three acres of land in survey No.159/1A-1 of Thinoor Village in Vadakara Taluk. After many negotiations, the petitioner reduced the bribe amount to ₹6,000/- and he directed the defacto complainant to pay the amount on 16.09.2011. Pursuant to the tenacious demand, the defacto complainant paid the sum from the petitioner's office. Accordingly, a prosecution is launched alleging that he has committed the offences aforementioned.

6. Allegations against the petitioner in W.P.(C) No.18325 of 2015 are that accused 1 to 7 and 9, while working as public servants, abused their official positions and committed criminal misconduct by demanding and accepting bribe. Accused 1 to 9 were also engaged in criminal conspiracy and had issued bogus *pattayams* in Idukki Village during the year 2000. Further, they caused disappearance of evidence by tearing off thandaper sheets of the relevant register kept in the Village Office, Idukki and thereby committed the offences. As stated above, crimes were registered against them and on the close of investigation, final reports were also filed in both the cases.

7. For the sake of convenience, W.P.(C) No.18325 of 2015 is taken as the leading case since prayers therein are more comprehensive.

8. Grounds of challenge in the writ petitions, stated briefly, are as follows: Registration of Ext.P1 FIR and submission of Ext.P2 final report in both cases by the Deputy Superintendents of Police, VACB, Idukki Unit and Kozhikode Unit respectively (who are the 6th respondent in both cases), are without any lawful authority. According to the petitioners, 6th respondent in each case is not a "police officer" within the meaning of Section 17 of the PC Act. They also contended that the 6th respondent legally cannot register a crime or submit a final report with respect to an offence under the PC Act as the officials of VACB are not police officers. It is therefore contended that for the said reason alone Exts.P1 and P2 are liable to be quashed.

9. Section 17 of the PC Act mandates that only a police officer not

below the rank of a Deputy Superintendent of Police ("Dy.SP.", for short) or a police officer of equivalent rank alone can investigate any offence punishable under the Act. Petitioners have no quarrel that the 6th respondent in each case is a Dy.SP. But, since they are absorbed into the Vigilance Department as ministerial staff by deputation or otherwise, they ceased to be "police officers" and as such precluded from registering any crime or submitting any final report.

10. As per G.O.(P) No.344/60/Home dated 03.06.1960 (Ext.P3 in both cases) the Government had set up anti-corruption machinery in the State. Said organization was named as "X-Branch Police" and the same was attached to the Central Intelligence Department (CID) Unit under the direct supervision of the Deputy Inspector General of Police. From Ext.P3, it can be seen that anti-corruption machinery to deal with corruption in public service is a part and parcel of police force in the State. Clause 7 in Ext.P3 stipulated that the offices mentioned in G.O.(MS) No.1037/Home dated 21.08.1958 would continue as police stations for the purpose of cognizance of and investigation into the offences under the Prevention of Corruption Act, 1947 (in short, "PC Act, 1947") and into other cognizable offences in which the public servants were involved during the same transaction.

11. On 21.12.1964, Home Department constituted a separate department in the name "Vigilance Department". X-Branch Police force was separated from Police Department so as to form a separate department and it was placed under the administrative control of a Director, who was to

function as the head of the department. Ext.P4 in both cases is the copy of the G.O.(MS) No.525/Home dated 21.12.1964 by which the Vigilance Department was constituted.

12. Petitioners contended that Ext.P4 is an executive order passed by the 2nd respondent. Personnel from the Police Department were to be posted in the Vigilance Department either by deputation or otherwise. Accordingly, such officers, who were working in the police force, cease to be police officers when they are absorbed into the Vigilance Department. Petitioners contended that the purpose of creation of Vigilance Department was to make a preliminary enquiry into the allegations of corruption and other offences under the PC Act and in case the allegations were found to be true, to file a report to the concerned police officer not below the rank of a Dy.SP. who, in turn, should register a crime, conduct investigation, arrest the offender, if necessary, and submit a final report.

13. Vigilance Department had time and again issued orders prescribing the procedure relating to enquiries to be conducted. Exts.P5 to P7 are orders issued prescribing the procedure relating to functioning of the Vigilance Department. From Ext.P7, it will be clear that the Vigilance Department was not an independent machinery, as claimed by the Government, free from political interference. On 26.03.1997 name of the Directorate of Vigilance was changed as “Vigilance and Anti Corruption Bureau”. Ext.P8 is the Government Order showing that fact. Later, 3rd respondent, as per Ext.P9, accorded sanction for creation of additional posts

in the Vigilance Department. Petitioners contended that the Vigilance Department was considered to be a distinct and separate entity and had nothing to do with the police force in the State. Merely some police officers from the State police force were absorbed by deputation into the Vigilance Department, those officials could not be termed as police officers competent to register crimes, conduct investigation, effect arrest of an offender and to submit a final report.

14. Petitioners submit that VACB is creation of an executive order of the State. It is not a statutory body. There is no law laying down the formation of VACB. As such, registration of FIR, arrest, investigation, filing of charge sheet and prosecution of offenders cannot be permitted to be done by the officers of VACB. Ext.P4 order creating the Vigilance Department does not refer to any statutory provision and its formation is without the support of any statute.

15. Drawing power from Article 246(3) of the Constitution of India, the State Government enacted Kerala Police Act, 1960 (in short, "Police Act, 1960"). Nowhere in the Police Act, 1960 there is a mention regarding constitution of a department as "Vigilance Department" or "VACB", empowered to enquire into any offence or to register a crime or to arrest a person or to submit a final report or to discharge any of the functions of a police officer under the Code of Criminal Procedure, 1973 (in short, "the Code"). According to the petitioners, if officers of VACB were allowed to discharge the functions of police as provided under the Code, it will cause

infringement of the fundamental rights of citizens enshrined under Article 21 of the Constitution of India.

16. Unlike the Kerala Police Act, 2011 (in short, “Police Act, 2011) the Police Act, 1960 did not authorise the constitution of any sub unit as the entire police establishment of the State was deemed to be one unified police force. At any rate, members of VACB are ministerial staff and they cannot perform the duties of a police officer as contemplated under the Code. Ext.P4 can, at best, be regarded as a departmental instruction. It cannot be termed as “law” within the meaning of Article 13(3)(a) of the Constitution nor can the executive instruction embodied in Ext.P4 be regarded to fall within the expression “procedure established by law” as envisaged by Article 21 of the Constitution.

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17. Power that is being exercised by the Government to refer some cases registered under the PC Act to the Court of Enquiry Commissioner and Special Judge and some other cases to the Tribunal constituted under the Kerala Civil Services (Vigilance Tribunal) Rules, 1960 (in short, “Vigilance Tribunal Rules”) is also under a serious challenge. Under Section 4 of the PC Act all the offences specified thereunder shall be tried by Special Judges only. However, Rule 4 of the Vigilance Tribunal Rules confers power on the Government to refer to the Tribunal any case or class of cases, which they consider should be dealt with by the Tribunal. Petitioners therefore contended that unbridled power has been given by the Rules to the Government to pick and choose cases of a particular set of persons and

refer them to the Tribunal so as to save them from clutches of law. The same offends Article 14 of the Constitution as some offenders, according to the choice of the Government, will be proceeded against by the Tribunal only for imposing departmental action, whereas some others will be tried by the Special Judges ending in their conviction and sentence. As such, Rule 4 of the Vigilance Tribunal Rules is to be declared unconstitutional. Ext.P10 is an order by the 3rd respondent whereby a case of an offender against whom a crime was registered under Sections 7, 13(2) and 13(1)(d) of the PC Act was referred to the Vigilance Tribunal, whereas the petitioners, against whom the very same offences are charged, are being prosecuted before the Special Court. In the writ petitions, the prayers essentially made are:

> *a. Call for the records leading to Exhibits P1 and P2 Criminal/Prosecution Proceedings against the petitioners in both cases and quash them by issuing a writ of certiorari or any other appropriate writ, direction or order.*
>
> *b. Call for the records leading to the passing of Exhibit P4 and quash the same as ultra vires the Constitution of India, by issuing a writ of certiorari or any other appropriate writ, direction or order.*
>
> *c. To declare that the Vigilance and Anti Corruption Bureau (VACB) constituted as per Exhibit P4 Executive Order of the 2nd respondent does not have any power or authority to register a case, arrest a person as an offender, conduct*

search and seizure, file final report or to prosecute an accused before a court of law and that the VACB can only conduct a preliminary enquiry into any of the allegations of corruption and misconduct on the part of public servants or as to whether such allegations of misconduct attract the provisions of the Prevention of Corruption Act, 1988 and thereafter, if necessary refer the same to a Police Officer not below the rank of a Deputy Superintendent of Police to register a crime and to take follow up actions as contemplated under Section 17 of the Prevention of Corruption Act.

d. To declare that Rule 4 of the Kerala Civil Services (Vigilance Tribunal) Rules 1960, as violative of Article 14 of the Constitution of India and ultra vires of the Constitution.

e. Declare that the mere issuance of Exhibit P11 notification will not confer the powers of a 'Police Officer' as contemplated in the Code of Criminal Procedure to the Vigilance Department so as to make it a constitutionally valid 'police force' empowered to investigate crimes.

f. grant such other reliefs which this Honourable Court may deem fit and proper in the interest of justice.

18. Respondents 2 and 3 in W.P.(C) No.18325 of 2015 together filed a counter affidavit on behalf of the State and on their personal behalf. Senior Government Pleader filed a memo dated 29.09.2015 adopting the

contentions raised in the counter affidavit filed in the leading case in W.P.(C) No.22684 of 2014 as well.

19. Gist of the averments in the counter affidavit are as follows:Writ petitions are not legally and factually maintainable. Ext.R1(a) marked in the counter affidavit is same as Ext.P3. Under Section 3 of the Police Act, 1960 the State Government is empowered to constitute a separate wing to discharge the functions of a police officer as provided by the Code. To strengthen the then existing vigilance machinery in the State and for more effective investigation into cases involving allegations of corruption and misconduct on the part of public servants and also taking into consideration the recommendations of Sanathanam Committee, the Government had changed the X Branch of the police as a separate vigilance division under a separate Director vide Ext.R1(b) (same as Ext.P4). In 1975, the vigilance division was renamed as "Vigilance Department" vide Government letter No.5520/A1/75/Vig dated 27.08.1975. A copy of circular No.6/75 dated 02.09.1975 based on the above Government letter is Ext.R1(c). Nomenclature of the Vigilance Department was subsequently changed to VACB vide Ext.R1(d) (same as Ext.P8). VACB is a specialised agency of the Government of Kerala designed to combat and control corruption among the public servants. Invested with wide investigative powers derived from the statutory provisions and Government/departmental orders, VACB undertakes investigation of cases registered under the PC Act and any offence under other Acts committed in the same transaction. It conducts enquiry into

complaints of misconduct and misdemeanour on the part of public servants. VACB functions under the over all control and supervision of a Director, who is of the rank of Director General of Police. Work of VACB is closely monitored and supervised by the Vigilance Department under the Additional Chief Secretary to the Government, Home and Vigilance. Procedure relating to investigation and enquiry conducted by VACB are spelt out in various Government Orders. Ext.R1(e) and R1(f) relate to the procedure to be followed by VACB. A unit of VACB functions in each of the 14 districts in the State. A Dy.SP. heads the unit. Each unit is notified by the Government as a police station under Section 2(s) of the Code. As per Ext.P11 notification dated 04.12.2000, the buildings at various places, where VACB is housed, have been declared as police stations. Dy.SP. functions as the Station House Officer and as such exercises powers conferred by various statutes, including the Code, in the matter of registration, investigation and prosecution of cases. He is assisted in the investigation and enquiry by Police Inspectors and other subordinate police officers. Over and above, special investigation units and special cell units are also notified as police stations. A Superintendent of Police heads the unit and functions as Station House Officer of that police station.

20. As provided under Section 17 of the PC Act, investigation of any offence punishable under the PC Act or any arrest thereunder without a warrant within the State of Kerala can be made only by a Dy.SP. or an officer of equivalent rank. But, as provided in the first proviso to Section 17 of the

PC Act, the State Government is competent to issue a general or special order authorising a police officer not below the rank of a Circle Inspector of Police to investigate any such offence. Hence, as per the powers conferred on the State Government under the first proviso to Section 17 of the PC Act, the Government, vide notification No.12094/C1/88/Vig. dated 02.03.1993, have authorised police officers not below the rank of an Inspector of Police to investigate any offence punishable under the PC Act without the order of a Magistrate of First Class or to make arrest without a warrant within the jurisdiction of the particular police station to which the police officer is attached to. Ext.R1(g) is the relevant notification.

21. Respondents submitted that all the police personnel working in VACB continued to be police officers and as such they can exercise all the powers vested in them under various statutes and rules. It requires to be stated that VACB is headed by a Director, who is one of the senior-most police officers in the rank of Director General of Police. Director, VACB exercises power of superintendence over the investigations conducted by all the officers having powers to investigate. All the police officers as well as policemen working in VACB are drawn from the Police Department. Such officers and personnel are taken on deputation to VACB. It is important to point out that every building where VACB unit offices, range unit officers, special cell offices are housed, have been declared as police stations so as to enable the police officers to investigate offences punishable under the PC Act and other offences under any other law for the time being in force

committed in the same transaction. Hence, the contentions otherwise raised by the petitioners are without any legal foundation and therefore are unsustainable.

22. There is no substance in the challenge of the petitioners that the Government cannot establish a separate police wing as VACB. Article 166 of the Constitution authorises the Governor of the State to make Rules of Business. On the basis of the powers conferred by virtue of Clauses 2 and 3 of Article 166 of the Constitution, the Governor of Kerala promulgated the Rules of Business of Government of Kerala. There is sufficient constitutional justification for creation of a separate business by the provisions of the Constitution. That apart, Kerala Police Act, 2011 (in short, "Police Act, 2011") expressly confer predominant powers on the Government for the purpose of formation of special units, branches, squads, etc. All the factual allegations are also denied by the respondents.

23. At the time of hearing, an additional counter affidavit was also filed on behalf of the State. According to the averments therein, under the proviso to Article 309 of the Constitution, the Governor is competent to frame rules relating to recruitment of Government servants as well as conditions of their service. Section 2 of the Kerala Public Services Act, 1968 empowers the Government to make rules either prospectively or retrospectively to regulate the recruitment and conditions of service of persons appointed to Government service. Kerala State and Subordinate Service Rules ("KSSR", for short) and Vigilance Tribunal Rules, though originally framed under the

proviso to Article 309 of the Constitution, are to be deemed to have been made under the Kerala Public Services Act. Challenges made against Rule 4 of the Vigilance Tribunal Rules are legally unsustainable. According to the respondents, the writ petitions are devoid of any merit and are liable to be dismissed.

Questions (I) to (III)

24. History of anti-corruption law in India is as old as the Indian Penal Code, 1860 (in short, “IPC”). Sections 161 to 165 and later added Section 165A IPC were dealing with offences by or relating to public servants taking gratification, other than legal remuneration in respect of an official act; taking gratification in order, by corrupt or illegal means, to influence public servant; taking gratification for exercise or personal influence with public servant and punishment for abetment by public servant of offences defined in the aforementioned Sections. Similarly public servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by such public servant was also made punishable. It is relevant to note that PC Act, 1947, with an object of effectively preventing bribery and corruption, came into force on 11.03.1947. Subsequently, Criminal Law (Amendment) Act, 1952 came into force on 12.07.1952. Legislature, cognizant of the fact that PC Act, 1947 was in operation, with a dual intention, enacted Criminal Law (Amendment) Act, 1952 to try offences relating to corruption by such court, which could inflict adequate punishments and to have a speedy procedure for disposal of these cases. Later, the

amendments made to the IPC in the aforementioned Sections were repealed by the Repealing and Amending Act, 1957. Thereafter, by virtue of Section 31 of the PC Act, Sections 161 to 165A (both inclusive) of IPC were omitted.

25. Another aspect to be borne in mind in this context is that the definition of "public servant" in Section 2(c) of the PC Act is very wide, which takes in Government servants and persons in the service of statutory corporations, Judges, etc.

26. Shri D.Kishore opened his argument by contending that any executive action which breach the fundamental right of a person must have the authority of law to support it. To buttress this argument, reliance is placed on a Constitution Bench decision of the apex Court in **Justice K.S.Puttaswamy (Retd.) and another v. Union of India and others ((2019)1 SCC 1**). According to him, VACB is the creation of an executive fiat. It is not a statutory body. There is no law laying down formation of VACB. For the same reason, registration of FIR, arrest, investigation, filing of charge sheet and prosecution of the alleged offenders under the PC Act or any other enactment cannot be permitted to be done by the officers of VACB. According to the petitioners, the officers working on deputation or otherwise in VACB cannot be regarded as police officers.

27. Indisputably, establishment of police force is a State subject, falling in List II of the 7th Schedule of the Constitution of India. The expression "police" is not defined either in the IPC or in the Code. Word "police" has been defined in Section 2(iv) of the Police Act, 1960 as follows:

""police" shall include all persons by whatever name known who exercise any police functions in any part of the State of Kerala and "police officer" means any member of the police force"

Police Act, 1960 was repealed by Police Act, 2011, which came into force on 31.01.2011. Ext.P1 FIR in W.P.(C) No.22684 of 2014 was registered against the petitioner on 16.09.2011. It is therefore clear that the case was registered subsequent to commencement of the Police Act, 2011. However, Ext.P1 FIR against the petitioner in W.P.(C) No.18325 of 2015 was registered on 08.05.2007 during the currency of the Police Act, 1960. Definition of "police" in Section 2(e) of Police Act, 2011 reads as follows:

""Police" means and includes all persons exercising the duties and functions specified under Sections 3 and 4 and who are authorised under Section 88 to do so"

In Police Act, 1960, there is no definition for the expression "police force". Whereas in Police Act, 2011, the said expression is defined in Section 2(f) as follows:

""Police Force" means the police force referred under Section 14"

We shall quote Section 14 for clarity and certainty:

*"**Kerala Police**.-(1) There shall be one unified Police Force for the State of Kerala named the Kerala Police and it may be divided into as many sub-units, Units, Branches*

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or Wings on the basis of geographical convenience or functional efficiency or any special purpose as may be decided by the Government from time to time.

(2) In the Kerala Police Force, subject to the limit that there being no rank higher than that of the State Police Chief, the officers of various ranks as may be fixed by the Government from time to time shall be included and these ranks shall, in ascending order, be as follows:-

(a) Police Constable;

(b) Police Head Constable;

(c) Assistant Sub-Inspector of Police;

(d) Sub-Inspector of Police;

(e) Inspector of Police;

(f) Deputy Superintendent of Police;

(g) Superintendent of Police;

(h) Deputy Inspector General of Police;

(i) Inspector General of Police;

(j) Additional Director General of Police;

(k) Director General of Police;

(l) Director General of Police & State Police Chief.

(3) The Government may, by general or special order, specify that any other phrases used to denote any

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Police rank either in the Kerala Police or any other State or Central Government shall be deemed to be equivalent to anyone among the above ranks.

(4) Nothing contained in sub-section (2) shall be deemed to prevent the power of the Government in creating a new rank or in giving a new designation to a rank specified therein."

As per Section 3 of the Police Act, 1960, constitution of police force is as follows:

"*"**Constitution of Police force**.- The entire police establishment of the State shall be deemed to be one police force and shall consist of such number of superior and subordinate police officers and shall be otherwise constituted in such manner, as may, from time to time, be ordered by the Government."*

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A close scrutiny of Section 14 of the Police Act, 2011 will show that what was provided under Section 3 of the Police Act, 1960 has been expatiated for clarity. Moreover, Sub-section (1) of Section 14 of the present Act empowers the Government to divide Kerala Police into as many sub units, units, branches, or wings on the basis of geographical convenience or functional efficiency or any special purpose, as may be decided by the Government from time to time. Shri D.Kishore contended that this could not have been the position prior to the Police Act, 2011, if we carefully look into Section 3 of the

Police Act, 1960. It is therefore argued that the Vigilance Department or its successor VACB cannot be regarded as part of police force. Needless to say, this is strongly opposed by Shri Suman Chakravarthy on behalf of the State. We shall consider merits of the rival submissions in the succeeding paragraphs.

28. It may be profitable to refer to Section 69 of the Police Act, 1960, which reads as follows:

> *"**Power of Government to make rules**.- (1) The Government may, by notification in the Gazette, make rules consistent with this Act to-*
>
> *(a) regulate the procedure to be followed by Magistrates and police officers in the discharge of any duty imposed upon them by or under the provisions of this Act;*
>
> *(b) regulate the recruitment and conditions of service of police officers other than the members of the Indian Police Service;*
>
> *(c) prescribe the procedure in accordance with which any licence or permission sought to be obtained or required under this Act should be applied for and fix the fees to be charged for any such licence or permission and;*
>
> *(ca) prescribe the authority and the procedure for the grant of permit under section 18A, the terms and conditions of such permit and the fee to be levied for granting*

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such permit;

(cb) prescribe the manner in which and the time within which an appeal under sub-section (2) of section 18B may be filed and the procedure to be followed for the disposal of such appeal;

(d) give effect to the provisions of this Act generally.

(2) All rules made under this section shall be laid before the Legislative Assembly for not less than fourteen days, as soon as possible after they are made and shall be subject to such modifications, whether by way of repeal or amendment as the Assembly may make during the session in which they are so laid or the session immediately following."

It is discernible from the above provision that the State Government is empowered to regulate the procedure to be followed by Magistrates and police officers in the discharge of any duty imposed on them by or under the provisions of the Act, to regulate the recruitment and conditions of service of police officers other than the members of the Indian Police Service (IPS) and to give effect to the provisions of the Police Act generally. Shri Suman Chakravarthy, relying on this provision, argued that even under the Police Act, 1960 the State Government had sufficient powers to constitute separate wings or units in the Police Department for dealing with various types of

offences.

29. Ext.P3, in both cases, is an order issued by the Home Department of the State Government on 03.06.1960. Admittedly it was issued prior to the commencement of the Police Act, 1960 which came into force on 15.02.1961. On a plain reading of Ext.P3, it will be evident that the Government had considered questions of revising the organisation, set up and working of anti-corruption machinery in the State. Government therefore formed X-Branch Police attached to CID unit under the direct supervision of Deputy Inspector General of Police, Railways and CID and Inspector General of Police. Staff strength, zones into which X-Branch were divided, nature of duties, etc. are prescribed in Ext.P3. Types of cases handled by X-Branch Police are as follows:

> *"Types of cases:-*
>
> *The X-Br. shall take up investigation of cases falling under the following categories:-*
>
> *(i) Illegal gratification in any form;*
>
> *(ii) Nepotism;*
>
> *(iii) Causing wrongful loss to Govt. property or revenue or claims or dues;*
>
> *(iv) Making false claims against Govt. such as false T.A., House rent, etc.*
>
> *(v) Any dishonest or intentionally improper conduct on the part of a Govt. Servant or abuse of his*

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powers as a Govt. Servant;

(vi) Causing avoidable delay in the disposal of Govt. business;

(vii) Misappropriation or misuse of any Govt. property;

(viii) Gross negligence or dereliction of duty;

(ix) Any illegal or improper conduct; and

(x) Abetment of the above offences."

As per Clause 7, it has been clearly mentioned in Ext.P3 that the offices mentioned in G.O.(Ms.) 1037/Home (A) dated 21.08.1958 will continue as police stations for the purpose of cognizance of and investigation into offences under the PC Act, 1947 and into cognizable offences in which public servants are involved. Mode of registering cases and conducting preliminary enquiry could be seen mentioned in Ext.P3. It is important to note that the petitioners have no objection regarding the State Government's power to constitute X-Branch Police as provided under Ext.P3. They have no case that the Government had no power to do so. According to them, Ext.P4 has the effect of creating a separate department for investigation into the allegations of corruption covered by the PC Act, 1947, which was the law prevailing at that time. Petitioners would further contend that since the Vigilance Department cannot legally be regarded as part of police force, they do not have investigative powers.

30. To appreciate this contention, we shall carefully look into Ext.P4.

It reads thus:

"GOVERNMENT OF KERALA

Abstract

Strengthening of Vigilance Machinery - Appointment of Director of Vigilance Investigation - Orders issued.

--

HOME (S) DEPARTMENT

G.O.MS No.525/Home Trivandrum, 21-12-1964

--

Order

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The question of strengthening the Vigilance machinery in the State has been engaging the attention of the Government for some time past. Government have now decided that there should be a separate Vigilance Division for more effective investigation of cases of corruption and misconduct on the part of public servants. Accordingly they are pleased to direct that the present 'X' Branch Police will form a separate department known as the Vigilance Division and that it will be under the administrative control of a Director who will function as the Head of the Department. The headquarters of the Director will be at Trivandrum. In order to implement the above orders the Government are pleased to sanction the creation of a post of Director of

Vigilance Investigation on a pay of Rs.2,250/- p.m. The post will be of a status equal to that of the Inspector General of Police.

2. The expenditure on this account will be met from "23 Police (h) (ii) X-Branch".

3. The Government are also pleased to appoint Shri N.Gopalan, Director of Civil Defence as the Director of Vigilance Investigation.

4. The Director of Vigilance Investigation will also be in charge of the work relating to Civil Defence, Home Guards and Fire Services. G.O.(MS) 33/Home dated 18-1-1963 will stand modified to the extent indicated above.

5. This order issues with the concurrence of the Finance Department.

(By order of the Governor)

C.K.Kochukoshy,

Secretary to Government.

To

The Inspector General of Police.

xx xx xx

/True Copy/"

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31. Relying on a statement in Ext.P4, that the then existing X-

Branch Police will form a separate department known as Vigilance Division, Shri D.Kishore contended that the investigative powers conferred on X-Branch Police as per Ext.P3 was not transferred to the Vigilance Division as per Ext.P4. It is discernible from Ext.P4 that the Vigilance Division was put under the administrative control of a Director, who was to function as head of the department. Our attention has been drawn to another statement in Ext.P4 that the post of Director would be of a status equal to that of the Inspector General of Police.

32. Ext.P5 is also relevant for the purpose of deciding the nature of work to be carried on by the officers in the Vigilance Division. As per Ext.P5, the organisational set up of the Vigilance Division is such that it would function under the control and supervision of the Director of Vigilance Investigation, who would be assisted by such number of Deputy Inspector Generals of Police and Superintendents of Police, as the Government may from time to time decide. Zonal areas and jurisdiction are also specified in Ext.P5. In Clause 1(iii) to Ext.P5, it is clearly mentioned that selection of the personnel to be drawn from the Police Department would be made by the Director of Vigilance Investigation after ascertaining from the Director General of Police and the Government about availability of the required officers for posting to the Vigilance Department. Clause (iv) would show that the selected officers were to work in the Vigilance Department on deputation for a period of three years. Object of the Vigilance Department was to combat effectively corruption and misconduct on the part of Government

servants and public servants. Nature of cases to be handled by the Vigilance Department was substantially the same as that was handled by X-Branch Police. Ext.P6 is the revised order relating to set up, working and procedure of the Vigilance Department dated 12.05.1992. Substratum of Exts.P5 and P6 is the same because minor changes in the procedure relating to the functioning of Vigilance Department alone are prescribed by Ext.P6.

33. Shri D.Kishore argued that from Exts.P5 and P6, it can be seen that the police officers are taken to the Vigilance Department on deputation and therefore they are governed by Rule 9B of KSSR (Part II) . It reads as follows:

> *"Notwithstanding anything contained in these Rules or in the Special Rules, the Government may, in public interest and for reasons to be recorded in writing, depute or transfer officers from one service to another or from one Department to another within the same service or sent to or take in officers from other Governments or Statutory Bodies subject to such conditions as the Government may in each case impose:*
>
> *Provided that in the case of transfers in the interest of security of State, the reasons need not be recorded if Government are satisfied that it is not expedient to disclose the reasons for such transfer:*
>
> *Provided further that the Commission shall be*

> *consulted in respect of such deputations and transfers whenever such consultation has not been specifically excluded by the provisions of the Kerala Public Service Commission (Consultation) Regulations, 1957."*

It is also submitted that the second proviso to Rule 9B above has been repeatedly violated since the Government had not consulted the Public Service Commission ("PSC", for short) before deputing officers to the Police Department. Shri D.Kishore placed reliance on **State of Punjab and others v. Inder Singh and others ((1997) 8 SCC 372)** to argue that "deputation" means service outside the cadre or outside the parent department.

34. Shri Suman Chakravarthy, in reply, contended that the Vigilance Department is only a wing of the police force and police officers of various ranks are selected to work in the Vigilance Department depending on their merit and efficiency. Police officers working in VACB cannot be said to be on deputation in *stricto sensu* as they continue as police officers deployed for a specialized work within the same force. Hence the officers in VACB cannot be regarded as officers on deputation from outside the cadre or outside the parent department. These contentions of the respondents, in our view, are weighty and acceptable. Relying on the decision in **C.Rangaswamaiah and others v. Karnataka Lokayukta and others ((1998) 6 SCC 66)** Shri Suman Chakravarthy contended that non-consultation with PSC is a matter between the State Government and the Commission and it is none of the concern of those public servants against whom the police officers on deputation had

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conducted investigation. To buttress this argument, reliance is placed on paragraph 24 of **C.Rangaswamaiah**'s case. Legal principles laid down by the apex Court therein reinforces the case of the respondents in this regard.

35. Shri D.Kishore questioned the authority of VACB to conduct investigation into corruption allegations, even if the Government had been authorised under Sections 3 and 69 of the Police Act, 1960 to constitute a police force in such manner, as may from time to time be ordered. According to him, absence of a statute empowering the police officers, who are taken on deputation to VACB, to investigate crimes under the PC Act is fatal to their authority to start, conduct and culminate an investigation into a final report and also to prosecute the alleged offenders. It is also argued that despite commencement of the Police Act, 2011 on 31.01.2011, authorising the Government to divide the police force into as many units, sub units, wings or branches on the basis of geographical convenience or functional efficiency or any special purpose, as may be decided by the Government from time to time, no order has been issued by the State in tune with Section 14 of the Police Act, 2011. They are still operating with Ext.P4, which is legally impermissible. In this context, it may be apposite to refer to Section 21 of the Police Act, 2011. Sub-section (1) of Section 21 of the Police Act, 2011 authorises the Government as follows:

> ***"21. Special Wings, Units, Branches, Squads**.-*
>
> *(1) Government may, in order to assist the State Police Chief or other Police functionaries or District Police Chiefs*

or to assist the police in general in their duties and functions, by general or special order, create and maintain any Wing or Special Unit, Specialized Branch or Special Squad, etc. of such strength, internal units, powers, duties, jurisdiction and internal or external supervisory structure as may be fixed by the Government by order.

xxxxxxxx"

From a reading of Sub-section (2), especially Section 21(2)(n), it can be seen that the Government have been empowered to create units or make special arrangements, inter alia, for matters like investigation of complicated, heinous, sensational or specially important crimes and enforcement of any local or special law or special enforcement of law in any area. Shri D.Kishore argued that absence of any notification under Section 21(2)(n) for creating a force for enforcement of local or special law or special enforcement of law in any area and even now operating with Ext.P4 amounts to a clear illegality.

36. Shri Suman Chakravarthy countered these arguments pointing out that on a careful perusal of Ext.P4, it can be seen that the Vigilance Department and its rechristened entity, viz., VACB are continuations of X-Branch formed under Ext.P3. Ext.P4 was issued only with a view to streamline the functioning of anti-corruption machinery which was put in place through Ext.P3 and it only clarified certain matters for effective functioning of the machinery. Merely because police officers in different ranks were taken to the Vigilance Department, they are not denuded of their

powers under the Police Act in force at the material time.

37. It is also contended by Shri Suman Chakravarthy that the Government action can be constitutionally justified with reference to Article 166 of the Constitution.

38. Article 166 of the Constitution is extracted for clarity:

> *"**Conduct of business of the Government of a State**.- (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.*
>
> *(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.*
>
> *(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion."*

Cognate provision is Article 77, which deals with the conduct of business of the Government of India. Article 166(3) of the Constitution specifically

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mandates that the Governor shall make rules for the convenient transaction of the business of the Government of the State. Pursuant to this constitutional mandate, Rules of Business of the Government of Kerala had been passed long before. Rule 4 thereof says that the business of the Government shall be transacted in the department specified in the First Schedule and shall be classified and distributed between those departments as laid down therein. First Schedule set up under the Rule would show that item No.36 is the Vigilance Department. According to the Rules of Business of the Government of Kerala, Vigilance Department is discharging duties in respect of the following matters:

"XXXVI. VIGILANCE DEPARTMENT

1. All cases of corruption including cases of complaints or allegations against public servants.

2. Establishment of the Vigilance and Anti-corruption Bureau.

3. Establishment of the Enquiry Commissioner and Special Judge and his staff.

4. Kerala Public Men (Prevention of Corruption) Act, 1983.

5. Vigilance Organisation.

6. Establishment of Tribunal of Disciplinary Proceedings and his staff.

7. Kerala Public Servants (Inquiries) Act, 1963.

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8. Issuance of orders sanctioning prosecution of a public servant under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) or and the Prevention of Corruption Act, 1988 (Central Act 49 of 1988) placing him under suspension and finalising the disciplinary proceedings against him under the relevant rules and orders in pursuance of a Vigilance Enquiry contemplated/initiated against the public servant."

39. Rules of Business are intended for convenient transaction of Governmental business. They are, therefore, to be construed as directory, so that, substantial compliance with them would suffice to uphold the validity of the relevant order of the Government (see - **State of U.P. v. Om Prakash Gupta - AIR 1970 SC 679**). There cannot be any dispute to the proposition that Rules of Business being the rules for the convenient transaction of the Governmental business, it is also open to the Governor to change them from time to time or to supplement them by issuing executive instructions. It is also fairly settled a proposition that Rules of Business needs no publication to give them legal effect.

40. The Supreme Court has held that even functions or duties which are vested in the State Government by a statute may be allocated to the Minister by Rules of Business framed under Article 166(3) (see **Gullapalli Nageswara Rao and others v. A.P.State Road Transport Corporation and another - AIR 1959 SC 308** and **State of Bihar v. Rani Sonabati Kumari -**

AIR 1961 SC 221).

41. Petitioners strongly contended that where rights of the citizens are prejudicially affected, executive actions could be justified only if it is supported by the authority of law and this proposition had been settled even prior to the pronouncement in **Justice K.S.Puttaswamy**'s case (supra). Declaration of the above principle could be seen in an early decision in **State of Madhya Pradesh and another v. Thakur Bharat Singh (AIR 1967 SC 1170)**.

42. Legal propositions laid down by a three Judge Bench of the Supreme Court in **D.Bhuvan Mohan Patnaik and others v. State of Andhra Pradesh and others (AIR 1974 SC 2092)** are that departmental instructions are neither "law" within the meaning of Article 13(3)(a) nor are they "procedure established by law" within the meaning of Article 21 and they are unassailable. We shall quote the relevant passage from the decision:

> *"14. But before examining the petitioners' contention, it is necessary to make a clarification. Learned counsel for the respondents harped on the reasonableness of the step taken by the jail authorities in installing the high-voltage live-wire on the jail walls. He contended that the mechanism was installed solely for the purpose of preventing the escape of prisoners and was therefore a reasonable restriction on the fundamental rights of the prisoners. This, in our opinion, is a wrong approach to the*

issue under consideration. If the petitioners succeed in establishing that the particular measure taken by the jail authorities violates any of the fundamental rights available to them under the Constitution, the justification of the measure must be sought in some "law", within the meaning of Article 13(3)(a) of the Constitution. The installation of the high-voltage wires lacks a statutory basis and seems to have been devised on the strength of departmental instructions. Such instructions are neither "law" within the meaning of Art.13 (3)(a) nor are they "procedure established by law" within the meaning of Article 21 of the Constitution. Therefore, if the petitioners are right in their contention that the mechanism constitutes an infringement of any of the fundamental rights available to them, they would be entitled to the relief sought by them that the mechanism be dismantled. The State has not justified the installation of the mechanism on the basis of a 'law' or a 'procedure established by law'."

43. Respondents have chosen to take shelter under Article 162 of the Constitution of India too to justify formation of VACB. Article 162 reads as follows:

*"**Extent of executive power of State**.-Subject to the provisions of this Constitution, the executive power of a*

State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

According to the learned author **Shri Durga Das Basu (Commentary on the Constitution of India, 8th Edition 2009, Vol.5, page 6124)** the following principles would emerge if Article 162 is considered along with Article 73:

"(1) The executive authority of a State shall be exclusive in respect of the subjects enumerated in List II of Schedule VII.

(2) The executive authority of the State will also extend to matters included in List III, except as otherwise provided in the Constitution or in any law made by Parliament (Art.73(1) Proviso, Art.162, Proviso)

(3) The State Executive shall have no authority over the subjects enumerated in List I (Subject to Art.73(2))."

Learned author further says at page 6125:

"The executive power of the State Government under

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Art.162 is co-extensive with the legislative power of the State legislature. But, in the absence of any law, the State Govt. or its officers in exercise of executive authority, cannot infringe citizen's rights merely because the State legislature has power to make laws with regard to that subject. Moreover, the proviso to Art.162 itself contains limitation on the exercise of executive power of the State. That limitation was necessary to avoid conflict in the exercise of executive power of State and the Union Government in respect of matters enumerated in List III of the Seventh Schedule. If Parliament and the State legislature both have power to make law in a matter, the executive power of the State shall be subject to the law made by Parliament, or restricted by the executive power of the Union expressly conferred on it by the Constitution, or any law made by Parliament. The language of Art.162 clearly indicates that the powers of the State do extend to matters upon which the State legislature is competent to legislate and are not confined to matters over which the legislation has been passed already. ...."

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Indubitably, so long as the State Government does not go against the provisions of the Constitution or any law, the amplitude of its executive power cannot be circumscribed. Legal proposition that if there is no enactment covering a particular aspect, the Government can carry on administration by

issuing administrative directions and instructions, until the legislature makes a law in that behalf, is indisputable. Likewise, State Government can act in relation to any matter with respect to which the State legislature has power to make rules, even if there is no legislation to support the executive action, is also an undeniable principle.

44. We may refer to a decision rendered by a Constitution Bench of the Supreme Court in **Rai Sahib Ram Jawaya Kapur and others v. The State of Punjab (AIR 1955 SC 549)** wherein, inter alia, Article 162 was interpreted by the Supreme Court. The proposition laid down therein reads as follows:

> *"12. It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away.*
>
> *The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the*

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powers of departmental or subordinate legislation when such powers are delegated to it by the legislature.

It can also, when so empowered, exercise judicial functions in a limited way. The executive Government, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of Article 154 of the Constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws.

13. The limits within which the executive Government can function under the Indian Constitution can be ascertained without much difficulty by reference to the form of the executive which our Constitution has set up. Our Constitution, though federal in its structure, is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State.

The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the general administration of the State."

45. This decision was followed in **Bishambhar Dayal Chandra Mohan and others v. State of Uttar Pradesh and others ((1982) 1 SCC 39)**. It has been clearly held that every act done by the Government or by its officers must, if it is to operate to the prejudice of any person, be supported by any legislative authority. No doubt, power under Article 162 is subject to other provisions in the Constitution. An executive order must be passed in conformity with the Rules. Power of the State Government to issue executive instructions is confined to filling up of the gaps or covering the area which otherwise has not been covered by the existing rules. (see **Sant Ram Sharma v. State of Rajasthan and others -AIR 1967 SC 1910** and **DDA and others v. Joginder S.Monga and others - (2004) 2 SCC 297**). The decision in **Smt.Swaran Lata v. Union of India and others ((1979) 3 SCC 165)** declares that the executive is not prevented from making appointments under Article 162 even though no rules have been framed under Article 309 of the Constitution. In **B.N.Nagarajan and others v. State of Mysore and others (AIR 1966 SC 1942)** the proposition laid down is that the Governor,

being the head of the State, has power to make rules retrospectively. Therefore, we must take note of the authority of the State Government available under Article 162 of the Constitution to make rules relating to appointment of and allocation of duties to employees.

46. Shri D.Kishore relying on the decision of the Supreme Court in **Chief Settlement Commissioner, Punjab and others v. Ajit Singh Kalha (AIR 1969 SC 33)** contended that statutory provisions must prevail over executive instructions. There cannot be a dispute to the above proposition.

47. Learned counsel for the petitioners cited an unreported decision authored by one among us (A.Hariprasad, J.) in Crl.M.C.No.5261 of 2013 dated 26.08.2014, wherein it was observed in the course of discussion that the Vigilance Manual is having the force of law. On a perusal of the Vigilance and Anti Corruption Bureau Manual, 2001, we find that the above observation could be regarded as slightly an overstatement. It is a manual specifying the legal and procedural frame work for the effective working of a specialised organization like VACB. It is intended only to be circulated among the officers. Certainly it would bind the officers and they are obliged to follow the procedure set out therein. Any violation thereof may be amenable to a challenge. Still, it cannot be said to have force of law, especially in view of the decision in **D.Bhuvan Mohan Patnaik**'s case (supra). Observations in **Vineet Narain v. Union of India (AIR 1998 SC 889)** about CBI Manual would justify our reasoning. We quote the relevant portion from the said judgment:

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"58.(I)(12) The CBI Manual based on statutory provisions of CrPC provides essential guidelines for the CBI's functioning. It is imperative that CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned."

48. Respondents placed reliance on Article 309 of the Constitution also to advance their case. It reads thus:

*"**Recruitment and conditions of service of persons serving the Union or a State**.-Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:*

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make Rules regulating the recruitment, and the conditions of service of persons appointed, to such services

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and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any Rules so made shall have effect subject to the provisions of any such Act.”

The power conferred by Article 309 is subject to the opening words of the Article which govern not only the power of the Legislature but also the rule making power conferred by the proviso (see **State of U.P. v. Babu Ram Upadhya - AIR 1961 SC 751)**.

49. The proviso merely enables the President or the Governor to make rules to regulate the “recruitment and conditions of service” of the persons mentioned therein and is not co-extensive with the power of the Legislature under item 70 of List I or 41 of List II. Still, Rules made under Article 309 have statutory force (see **Raj Kumar v. Shakthi Raj (1997) 9 SCC 527)**. This argument of the respondents will assume relevance only if we find that VACB is created by an executive fiat only.

50. Shri Suman Chakravarthy strongly contended that the records in this case would clingingly establish that VACB is nothing but a unit or branch of the police force, assigned with the task of combating corruption and misconduct on the part of the public servants, including the Government employees. According to him, creation of VACB and deployment of police officers to do a specialised job will not take them out of the purview of “service” defined in Rule 2(15) of Part I of KSSR which says “service” means a group of persons classified by the State Government as a State or a

subordinate service, as the case may be. It is contended that all the police officers with the powers conferred on them by the Police Act and the Code function in the VACB as police officers of a single service. It is also emphasised that the petitioners have not made any challenge against Section 3 of the Police Act, 1960. They have not raised any dispute against Ext.P11, which was promulgated in accordance with Section 2(s) of the Code where police station is defined as any post or place declared generally or specially by the State Government to be a police station and includes any local area specified by the State Government in this behalf. In this regard, the challenge against Ext.P4 is unsustainable.

51. Respondents placed a strong reliance on the decision in **C.Rangaswamaiah**'s case (supra) to non-suit the petitioners. It will be apposite to make a short reference to the facts therein. The point raised before the Supreme Court was thus: Whether the investigation under Section 17 of the PC Act entrusted by the State of Karnataka to the police officers of the State having the requisite rank could still be said to be vitiated because of the fact that the said officers were on deputation to the police wing of the Karnataka State Lok Ayukta at the relevant time? Petitioners contended before the Supreme Court that the police officers on deputation to the Lok Ayukta could not have been entrusted with the investigation under Section 17 of the PC Act. The Supreme Court, after considering the scheme of the Karnataka State Lok Ayukta Act, 1984, the provisions in the Code and the relevant notifications issued by the State Government, made the following

observations in paragraph 17:

> *"We shall next refer to the relevant notifications which were referred to in the High Court. We have a notification dated 22-12-92 issued by the State Government under S.17 of the Prevention of Corruption Act, 1988 (issued in modification of an earlier notification dated 2-11-1992) designating all Inspectors of Police on deputation with the Karnataka Lokayukta to be police officers for the purposes of S.17 of the Prevention of Corruption Act, 1988 but subject to the "general and overall control and supervision" of the Director General, Bureau of Investigation, Lokayukta, Bangalore. Under the previous notification dated 2-11-1992, the said control and supervision of the police officers was vested with the Lokayukta. On 21-12-1992, the Government of Karnataka created a post of Director General, Bureau of Investigation, Lokayukta, in the rank of an Additional Director General of Police and then issued the notification dated 22-12-1992 above referred to vesting the control of the police staff in the Lokayukta with the general and overall control of the said Director General of Police. There is also a notification dated 26-5-1986 issued under S.2(s) of the Code of Criminal Procedure, 1973 declaring offices of the Lokayukta as police stations and authorising Inspectors of*

Police therein to conduct investigations under the Prevention of Corruption Act, 1988."

Thereafter, the apex Court answered the specific question: When the State Government had sent police officers on deputation to the Lok Ayukta, was it possible for the Government to entrust them with additional duties under the PC Act? Answer to the above question can be seen in paragraphs 22 and 23 of the judgment quoted below:

> *"22. There is no dispute that though these officers are on deputation they are otherwise of the requisite rank as contemplated by S.17 of the Prevention of Corruption Act, 1988 and that other formalities under that Act are satisfied for entrustment of duties under the Prevention of Corruption Act, 1988. Question is whether these police officers of the State can be invested with powers of investigation under S.17 of the Prevention of Corruption Act, 1988 by the State under its statutory powers traceable to the same section?*
>
> *23. It is true that normally, in respect of officers sent on deputation by the State to another authority, the lending authority should not, after deputation of its officers, entrust extra duties concerning the said lending authority to such officers without the consent of the borrowing authority. If, however, such action is taken by the lending authority by*

virtue of statutory powers and such a course is not objected to by the borrowing authority, can it be said that the entrustment is without jurisdiction? In our opinion, from a jurisdictional angle, the entrustment being under statutory powers of the State traceable to S.17 of the Prevention of Corruption Act, 1988 the same cannot be said to be outside the jurisdiction of the State Government. May be, if it is done without consulting the Lokayukta and obtaining its consent, it can only be treated as an issue between the State and the Lokayukta and is none of the concern of those public servants against whom these police officers on deputation are conducting the investigation. Such entrustment of duties has statutory backing and obviously also the tacit approval of the Lokayukta. Once there is such tacit approval of the Lokayukta, the writ petitioners cannot have any grievance that the Lokayukta ought not to have permitted such a course."

Finally, in paragraph 25, the Court made the following observations:

"In our view, if the State Government wants to entrust such extra work to the officers on deputation with the Lokayukta, it can certainly inform the Lokayukta of its desire to do so. If the Lokayukta agrees to such entrustment, there will be no problem. But if for good

reasons the Lokayukta thinks that such entrustment of work by the State Government is likely to affect its functioning or is likely to affect its independence, it can certainly inform the State Government accordingly. In case the State Government does not accept the view point of the Lokayukta, then it will be open to the Lokayukta having regard to the need to preserve its independence and effective functioning to take action under S.15(4) (read with S.15(2)) and direct that these officers on deputation in its police wing will not take up any such work entrusted to them by the State Government. Of course, it is expected that the State Government and the Lokayukta will avoid any such unpleasant situations but will act reasonably in their respective spheres."

52. Shri Suman Chakravarthy, placing complete reliance on this decision, contended that the case of the petitioners herein is worse than the petitioners in **C.Rangaswamaiah**'s case. According to him, police officers working in VACB remained to be police officers and they are part of the same police force and within the same service. The expression "deputation" is only a misnomer as VACB itself is a specialised unit or branch formed by the State Government for tackling issues relating to corruption among public servants. It is therefore argued that the challenge against Ext.P4 is devoid of any factual or legal basis.

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53. On a thorough consideration of the pleadings, records placed before us and arguments advanced, we are of the view that various challenges raised against Ext.P4 in these cases are legally unsustainable. It is important to note that the petitioners have no dispute at all regarding the Government's power to create separate units, sub-units or branches within the police force as was done as per Ext.P3. As mentioned above, Ext.P3 was issued prior to the commencement of the Police Act, 1960. Further, there cannot be any dispute that the establishment of police force in the State falls within the prerogative of the State Government as is evident on a conjoint reading of Article 246 with List II in the 7th Schedule to the Constitution of India. The State Government was constitutionally justified in promulgating Ext.P3 prior to enacting the Police Act, 1960 by virtue of Article 166 (2) and (3) and also Article 162 of the Constitution. To an extent, Article 309 also render support to the respondents' case. In the absence of any challenge against Ext.P3, we can only hold that the petitioners concede power to the State Government to set up a specialised branch in the Police Department for handling issues relating to corruption. Intent and purport of Ext.P4, in our view, is only to streamline the working of X-Branch created as per Ext.P3. Exts.P5 to P7 are the revised orders mentioning the guidelines for working and detailing the procedure relating to enquiries to be held by the Vigilance Department. Ext.P8 has the effect only of renaming the Directorate of Vigilance as Vigilance and Anti Corruption Bureau (VACB). We have no hesitation to hold that the source of power for issuing Ext.P4 can be traced to

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the Police Act, 1960. As mentioned above, drawing power from List II in the 7th Schedule to the Constitution, the State Government has enacted the Police Act, 1960. On a combined reading of Sections 2(iv), 3 and 69 of the Police Act, 1960, we find that the State Government, in the exercise of their power originating from the Constitution, had formed a police force reserving its authority to subdivide the force into as many sub-units, units, branches or wings as may be decided by the Government from time to time. Although, in Section 3 of the Police Act, 1960, it was not expressly mentioned in so many words that the Government had reserved their power to divide Kerala Police into as many sub-units, units, branches or wings as may be decided from time to time, we are prompted to read into Section 3 of the Police Act, 1960 such a power, which otherwise was certainly available with the Government. We find no legal reason to assume that the Government consciously abandoned their power to divide the police force into various segments while enacting Section 3 of the Police Act, 1960.

54. Our view is fortified by the settled rules of interpretation of statutes. It is indisputable that courts must proceed on the assumption that the Legislature did not make a mistake and that it did what is intended to be done. The court must, as far as possible, adopt a construction which will carry out the obvious intentions of the Legislature (see **Dadi Jagannadham v. Jammulu Ramulu (2001) 7 SCC 71**). All the above principles have been reiterated by the apex Court in **Manjit Singh alias Mange v. Central Bureau of Investigation ((2011) 11 SCC 578**).

55. We are, therefore, of the definite view that even if Section 3 of the Police Act, 1960 does not state in very many words the reservation of power by the State Government to divide the police force according to the need of the hour, we feel justified in reading such a power into the said provision. Any restricted interpretation of Section 3 will tend to do violence to the intent and purport of the State Act and it would result in unduly constricting the Government's power. Provisions in Section 69 of the Police Act, 1960 also strengthen our view. True, care has been taken while enacting Police Act, 2011 to incorporate Section 14 which says that a unified police force by name “Kerala Police” can be divided into as many sub-units, units, branches or wings for the reasons mentioned therein as decided by the Government from time to time. Mere absence of such clear expressions in Section 3 of the Police Act, 1960 would not narrow down or restrict the Government's existing power.

56. On an evaluation of the entire aspects, we have no hesitation to hold that VACB is only a continuation of X-Branch formed under Ext.P3. Later, it was transformed into Vigilance Department as per Ext.P4. Police officers working in VACB cannot be said to be officiating after their powers are denuded. Petitioners' contention that VACB is only a Government Department formed for conducting a preliminary investigation and after completing such preliminary investigation the case ought to be handed over to the Dy.SP. functioning in the law and order stream cannot be accepted. Firstly, the officers in the VACB who conduct investigation into corruption

allegations are unquestionably in the rank of Dy.SPs., which itself is in conformity with Section 17 of the PC Act. Secondly, officers in VACB investigating cases cannot be said to be Government employees without any investigative powers as they remain to be police officers. We find no merit in the petitioners' contentions that their constitutional rights under Article 21 are affected in any manner when the officers working in VACB conducted investigation into the alleged acts of corruption and misconduct.

57. To sum up, we hold that the Police Act, 1960, which itself was enacted in accordance with the authority under List II in the 7th Schedule to the Constitution of India, confers power on the State Government to issue Ext.P4. Contentions raised by the petitioners, that the registration of crimes, conduct of investigations, arrest of accused persons, filing of final reports and prosecution of cases in accordance with Ext.P4 are illegal, cannot be sustained. Ext.P4 executive order was issued to form a specialized force within the Kerala Police force. The police officers who worked in the erstwhile Vigilance Department derived power and authority from the Police Act, 1960. Likewise, the same statute empower to investigate those who at present work in VACB. Therefore, we find no merit in the challenge against Ext.P4. For the same reason, we find Exts.P1 and P2 criminal prosecutions are not liable to be interfered with.

Question (IV)

58. Petitioners vehementally contended that Rule 4 of the Vigilance Tribunal Rules is ultra vires of the Constitution as it violates Article 14.

Specifically it is argued that the provision confers arbitrary powers on the Government to pick and choose some cases registered by VACB to be sent to the Court of Enquiry Commissioner and Special Judge, constituted under the PC Act for trial and disposal of cases and some others to the Vigilance Tribunal, constituted under the Vigilance Tribunal Rules. According to Section 4(1) of the PC Act, notwithstanding anything contained in the Code or any other law for the time being in force, the offences specified in Sub-section (1) of Section 3 shall be tried by Special Judges only. Section 3 deals with the powers of the Central Government or the State Government to appoint as many Special Judges, as may be necessary for such area or areas, by notification for trial of any offence punishable under the PC Act and any conspiracy to commit or any attempt to commit or any abetment of offences under the Act. Petitioners, therefore, contended that Rule 4 of the Vigilance Tribunal Rules gives the Government an unbridled power to select cases registered under the PC Act and to refer some of them to the Tribunal so as to save their favourites from the clutches of law. According to them, this is a clear violation of Article 14 of the Constitution and goes against the statutory mandate under the PC Act too. Therefore Rule 4 of the Vigilance Tribunal Rules is liable to be declared unconstitutional.

59. Ext.P10 in both cases is the same. It is a copy of a Government Order dated 02.12.2013 issued by the 3rd respondent directing the Vigilance Tribunal, Thiruvananthapuram to conduct a detailed enquiry under the Vigilance Tribunal Rules and submit a report to the Government with findings

and recommendations. It is pertinent to note that the facts narrated in the order would show that certain Government servants, who functioned as staff members in a Village Office, had demanded and accepted bribe from a person as a motive for giving mahazar and location certificate for obtaining a quarry permit. It is also mentioned that the investigation revealed a prima facie case of grave official misconduct. Yet, the order says that the matter should be dealt with by the Vigilance Tribunal and a detailed enquiry should be conducted for taking departmental action. It is the case of the petitioners that despite the 3rd respondent entering a clear finding, he did not choose to grant sanction to prosecute the Government servants for the alleged offences under the PC Act. Instead, they are treated differently with a view to shield them from the punishments provided under the PC Act.

60. Section 4 of the PC Act gives the State Government no option to deal with offenders under the Act, other than to follow the course provided therein. We shall extract the relevant portions of Section 4 for clarity:

> *"**Cases triable by special Judges.**- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried by special Judges only.*
>
> *(2) Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by*

the special Judge appointed for the case, or, where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

xxxxxx"

In Sub-section (4), it is prescribed that the trial of an offence shall be held, as far as practicable, on a day-to-day basis and a time line of two years for conclusion of trial is also prescribed. Petitioners would contend that taking out some cases from the purview of the PC Act is not only illegal, but ultra vires of the Constitution.

61. In order to appreciate this contention, we deem it fit to take an overview of the Vigilance Tribunal Rules. The said Rules show that it was made in 1960 drawing power from Article 309 of the Constitution. Rule 3 in its amended form (as per G.O.(P) No.26/2017/Vig. Dated 13.09.2017) reads thus:

"3. (a) The Government may, by order, appoint one or more Tribunals for such areas as may be specified in the order.

(b) A Tribunal shall consist of.-

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(i) a judicial officer who has been or is eligible to be appointed as a District and Sessions Judge; or

(ii) a person with not less than ten years' experience in the administration or conduct of prosecution cases:

(c) Notwithstanding anything contained in the Public Services (Raising of Upper Age Limit for Appointment) Rules, 1978, only persons who have not attained the age of 55 years as on the 1st day of January of the year in which applications are invited shall be eligible for appointment under this rule."

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Rule 4 specifies the Government's power to refer to the Tribunal any case or class of cases, which they consider, should be dealt with by the Tribunal. The provision reads thus:

"*4. (1) The Government may refer to the Tribunal any case or class of cases, which they consider, should be dealt with by the Tribunal:*

Provided that all cases relating to Gazetted Officers in respect of matters involving corruption on the part of such officers in the discharge of their official duties shall be referred to the Tribunal.

(2) The Government may, for valid reasons refer any particular case to any Tribunal irrespective of the area of

jurisdiction of the Tribunal specified under sub-rule (a) of Rule 3.

(3) The Government may, at any stage before the hearing of arguments, for valid reasons transfer for trial any case pending trial before any Tribunal to any other Tribunal irrespective of his area of jurisdiction specified under sub-rule (a) of Rule 3. Reasons for such transfer shall be recorded in the transfer order itself."

Rule 5 deals with the power of the disciplinary authority or the appointing authority or any officer or authority empowered by the Government in this behalf to forward to the Government all the records in respect of a complaint or other information, received by such officer, for taking action against the officer concerned. Rule 8 specifies the manner in which the Tribunal shall conduct enquiry. Sub-rule (15) of Rule 8 has some bearing to the issue on hand. Hence it is quoted below:

"8. xxxxxx

(15) The Government shall either consider the report of the Tribunal and the records of the enquiry, or send these to the concerned disciplinary authority, for further action and final disposal in accordance with the relevant rules relating to the consideration and disposal of the report of an Inquiring Authority in respect of the Government Servant."

None of the provisions in the Rules obliges the Government to accept the report submitted by the Tribunal. It is therefore argued on behalf of the petitioners that the Rules not only surpass the mandate of the PC Act, but also give the Government an arbitrary and unreasonable power to save some erring officers.

62. Before considering the scope of Rule 4 of the Vigilance Tribunal Rules, we shall look into other relevant provisions in the PC Act. Section 19 of the PC Act deals with the requirement of previous sanction for prosecuting public servants. In clear words, it is mentioned in Section 19(1) that no court shall take cognizance of an offence punishable under Sections 7, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction of the Central Government, State Government or the authority competent to remove him from his office, as the case may be, depending on whether he is a Central Government employee or State Government employee or any other person falling within the definition of "public servant".

63. In **P.Sirajuddin v. State of Madras (AIR 1971 SC 520)** the Supreme Court emphasised the need of a preliminary enquiry before a public servant is publicly charged with act of dishonesty. In paragraph 17 of the judgment, following observations are made:

> *"Before a public servant, whatever be his status, is publicly charged with acts of dishonesty, which amount to serious misdemeanour and a first information is lodged*

against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this department but any such enquiry must proceed in a fair and reasonable manner. The enquiring officer must not act under any preconceived idea of guilt of the person whose conduct was being enquired into or pursue the enquiry in such a manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting measures which are of doubtful validity or sanction. The means adopted no less than the end to be achieved must be impeccable. In ordinary departmental proceedings against a Government servant charged with delinquency, the normal practice before the issue of a charge-sheet is for someone in authority to take down statements of persons involved in

the matter and to examine documents which have a bearing on the issue involved. It is only thereafter that a charge sheet is submitted and a full-scale enquiry is launched. When the enquiry is to be held for the purpose of finding out whether criminal proceedings are to be resorted to the scope thereof must be limited to the examination of persons who have knowledge of the affairs of the delinquent officer and documents bearing on the same to find out whether there is prima facie evidence of guilt to the officer."

This view was approved by a Constitution Bench of the apex Court in **Lalita Kumari v. Govt. of U.P.(2013 (4) KHC 552)**.

64. Now, we may refer to Vigilance and Anti-Corruption Bureau Manual, 2001 which, as stated above, deals with the procedure relating to investigation. As mentioned earlier, the officers functioning in VACB are obliged to follow the procedure set out in the Manual. The Manual is divided into various parts. Part I deals with general aspects. Part II speaks about anti-corruption functions. Part III is relating to methodology of enquiry/investigation. Part IV is all about penal process. Part V is miscellaneous topics and Part VI is Appendices I to XIII. Appendix II in the Manual is same as Ext.P6 (Ext.R1(e)). It is a Government order dated 12.05.1992. Ext.P6 enumerates organisation, control and supervision of the Vigilance Department, nature of duties, procedure for initiating vigilance

enquiries and related matters, types of cases to be dealt with by the Vigilance Department, registration of cases, etc. among other aspects. As per Clause (6) in Ext.P6, types of cases to be handled by the Vigilance Department are as follows:

> *“**Types of cases**:- The Vigilance Department shall take up investigation/enquiry of cases falling under the following categories:-*
>
> *(i) Offences of criminal misconduct by public servants as defined in the Prevention of Corruption Act, 1988;*
>
> *(ii) Any dishonest or intentionally improper conduct on the part of a public servant or abuse of powers as a public servant;*
>
> *(iii) Gross negligence or dereliction of duty;*
>
> *(iv) Misuse of any public money or property;*
>
> *(v) Misappropriation involving Government or public servants in which the amount exceeds Rs.50,000/-. All other cases of defalcation of public moneys and properties, including funds of co-operative societies, irrespective of the amount involved will be dealt with by the regular police, unless Government direct other-wise.*
>
> *(vi) Abetment of the above offences.”*

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Manner of registration of cases provided in Clause (8) reads as follows:

*"**Registration of cases**:- (1) If at any stage during the preliminary enquiry conducted by the Vigilance Department there are reasonable grounds to believe that the accused Government servant has committed an offence under the Prevention of Corruption Act, the preliminary enquiry will be stopped at that stage, and a crime case registered and investigated after obtaining sanction from the Director of Vigilance Investigation.*

(2) After completion of the investigation, a report giving the facts, evidence and circumstances in each case both for and against the prosecution shall be forwarded by the Deputy Superintendent of Police concerned to the Superintendent of Police concerned who will submit the same to the Director of Vigilance Investigation through the Inspector General of Police concerned for transmission to Government. In cases personally investigated by the Superintendent of Police or other Senior Officers of factual report will be prepared by them.

(3) In case where it is decided to prosecute an officer for the above offences, a charge sheet will be laid before the Special Judge after obtaining the necessary legal sanction.

(4) When it is considered necessary to transfer a

crime case from a local police station/unit to the Vigilance Department, the concerned Superintendent of Police of the District/Unit should forward the same to the Director of Vigilance Investigation, Thiruvananthapuram, who will decide whether it is a fit case to be investigated by the Vigilance Department and if so, take further action by re-registering the case in the Vigilance Department or otherwise return the case to the Local Police/Units."

Clause (13) therein deals with departmental actions.

65. Shri D.Kishore argued that the Government shall not be allowed to hand-pick corruption cases to be sent to the Court of Enquiry Commissioner and Special Judge and to the Vigilance Tribunal according to their whims and fancies. If done so, certainly it would violate the fundamental right guaranteed under Article 14 of the Constitution. Article 14 in clear terms says that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India. It may be noted that the right to equality has been declared by the Supreme Court as the basic feature of our constitution. Preamble to the Constitution of India emphasises principle of equality as basic to the constitution.

66. In **Constitutional Law of India (by H.M.Seervai, 4th Edition, Vol.I at page 439)** what is meant by equal protection of laws is described thus:

"If all men are created equal and remained equal

throughout their lives, thus the same laws would apply to all men. But, "we know" that men are unequal; consequently, a right conferred on persons that they shall not be denied "the equal protection of the laws", cannot mean the protection of the same laws for all. It is here that the doctrine of classification steps in and gives content and significance to the guarantee of the equal protection of the laws. According to that doctrine, equal protection of the laws must mean the protection of equal laws for all persons similarly situated. To separate persons similarly situated from those who are not we must 'discriminate', that is, act on the basis of a differences between persons, or, observe distinctions carefully' between persons who are and person who are not, similarly situated. But as the distinction is to be made for the purpose of making a law, how must the distinction be related to the law? This is answered by the central list for a permissible classification: "Permissible classification must satisfy two conditions, namely:(1) it must be founded on an intelligent differentia which distinguishes persons or things that are grouped together from others left out of the group; and (2) the differentia must have a rational relation to the object sought to be achieved by the statute in question with the qualification that the differentia and the object are

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different, so that the object by itself cannot be the basis of classification. A law based on a permissible classification, fulfils the guarantee of the equal protection of the laws and is valid".

67. According to **Shri Durga Das Basu**, in his **Commentary of the Constitution of India (8th Edition, Vol,2, page 1427)**, "intelligible differentia" means difference capable of being understood. A factor that distinguishes or in different state or class from another which is capable of being understood.

68. By keeping in mind the aforementioned constitutional principles and on evaluating the materials placed before us, we find that Rule 4 of the Vigilance Tribunal Rules does not empower the State Government to identify certain erring public servants to be dealt with under the Vigilance Tribunal instead of prosecuting them under the provisions of the PC Act. If the State Government exercise power in that manner, certainly it will infringe the fundamental right guaranteed under Article 14 of the Constitution. Viewing from any angle, we do not find a reasonable classification in selecting some corrupt officers to be dealt with by the Vigilance Tribunal and some others under the PC Act if they are on an equal footing.

69. In this context, we may refer to an argument advanced by Shri Suman Chakravarthy that the State Government will take recourse to the procedure prescribed under Rule 4 only when there is no material brought out in the investigation to prosecute the alleged offenders under the PC Act. In such cases, the Government may, nevertheless, feel that such public

servants prima facie have committed serious misconduct requiring departmental actions. Shri Suman Chakravarthy relied on **Macki Fernandez v. State of Kerala (1961 KHC 363), Narayana Panicker v. State of Kerala (1999 KHC 437), Premachandran v. Supdt. of Police (2004 KHC 235)** and **Antony v. State of Kerala (2000 KHC 86)** to contend that the Vigilance Tribunal Rules had been examined and approved by this Court in various cases. Facts in those decisions have no bearing to the facts in this case. Further, challenges now raised against Rule 4 of the Vigilance Tribunal Rules vis-a-vis Article 14 of the Constitution and provisions under the PC Act were not raised and considered in those decisions. Therefore, those decisions could be easily distinguished.

70. Indeed, the Government shall closely examine all the materials placed by the investigating agency for considering whether sanction ought to be granted under Section 19 of the PC Act for prosecuting public servants. At the time of scrutiny, the State Government shall consider all the materials placed before it objectively and a uniform standard shall be adopted in all cases of corruption. We are not oblivious of the reality that facts in each case may be different. But then, the State Government shall evolve a clear policy in segregating cases to be prosecuted under the PC Act and to be dealt with by the Vigilance Tribunal based on legally sound reasoning and on relevant materials placed before it. No doubt, legality of the reasoning adopted by the State Government is subject to judicial scrutiny. So also the propriety and regularity adopted in the process of reasoning.

71. Rule of Law is the bedrock of any civilized democracy. The scheme of our constitution is based upon the concept of Rule of Law. Apart from this constitutional guarantee, maintenance of Rule of Law is essential for protecting natural rights such as life, liberty and pursuit of happiness.

72. In a democracy, corruption in any form, at any level and in any domain of public administration is an anathema. Corruption, whether monetary or in any other form, nepotism, partisan attitude and favouritism are odious, offensive and objectionable. It is so, not only because corrupt public servants make unlawful gains in many forms, both tangible and intangible, but common people are unlawfully coerced and pressurized to oblige them in many ways, including paying illegal gratification for getting legitimate services done, which the public servants are legally bound to do. Therefore, we are of the definite view that a welfare Government cannot, for a moment, afford to invite criticism that they are soft on corruption.

73. We wish to make it clear that the State Government shall have no authority to take any decision to send a particular case or cases to the Vigilance Tribunal on extraneous considerations. If the State Government in a case find no material at all to prosecute the alleged offender or offenders under the provisions of the PC Act and, at the same time, they find the officer or officers have committed a grave misconduct under the service rules, then the State Government shall, by a speaking order, clarify why a prosecution under the PC Act was not resorted to before referring the matter to the Vigilance Tribunal. Needless to say, the State Government is obliged to treat

all the public servants, against whom allegations of corruption amounting to an offence under the PC Act are made out, on an equal footing and they should be dealt with in the same manner. Undue and unexplained delay in the process of granting or refusing sanction to prosecute public servants also invited criticisms on many a time, which can be averted by timely action. Sending a case to the Vigilance Tribunal for enquiry and departmental action is only an exceptional remedy where the State Government by an order in writing clearly spells out that no relevant material was placed before them to grant sanction to prosecute the offender under the PC Act. We find no legal bar in the State Government simultaneously initiating prosecution against a Government servant under the PC Act and sending him to the Vigilance Tribunal for enquiry. We are inclined to read down Rule 4 in the above lines so as to erase obnoxious or unconstitutional elements in it and to bring it in conformity with the object of the PC Act, instead of striking it down. We may refer to a decision in **State of Rajasthan v. Sanyam Lodha ((2011) 13 SCC 262)** wherein the Supreme Court held thus:

> *"It is true that any provision of an enactment can be read down so as to erase the obnoxious or unconstitutional element in it or to bring it in conformity with the object of such enactment. Similarly, a rule forming part of executive instructions can also be read down to save it from invalidity or to bring it in conformity with the avowed policy of the Government. When courts find a rule to be defective or*

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violative of the constitutional or statutory provision, they tend to save the rule, wherever possible and practical, by reading it down by a benevolent interpretation, rather than declare it as unconstitutional or invalid. …..........”

74. In the exercise of constitutional powers vested in this Court, we read down Rule 4(1) of the Vigilance Tribunal Rules in the following manner: The expression “Government may refer to the Tribunal any case or class of cases which they consider should be dealt with by the Tribunal” occuring in Rule 4 shall only mean and always meant to be "any case or class of cases where no evidence could be collected for prosecuting a public servant on allegations of corruption despite a thorough investigation". The Rule does not empower the State Government to refer any case to the Vigilance Tribunal in violation of the statutory provisions in the PC Act. If the Government feel, despite the non-availability of any relevant material to prosecute a public servant, that there are serious misconducts on his part warranting a departmental action, the Government can refer such cases to the Vigilance Tribunal.

In the result,

(I) We find that the Vigilance and Anti-Corruption Bureau (VACB) is a specialized police force constituted in the exercise of the State Government's legislative power and the officers who worked in the erstwhile Vigilance Department derived power and authority from the Kerala Police Act, 1960. For the same reason, we find that those officers, who work in

VACB at present, also get power and authority from the same Statute and therefore they are to be treated as police officers. So much so, they are entitled to register cases under the PC Act, carry on investigation and file a final report. It goes without saying that they are also entitled to prosecute the offenders. Challenge against Ext.P4 is devoid of any merit in law.

(II) We declare that Rule 4 of the Vigilance Tribunal Rules does not empower the State Government to pick and choose arbitrarily some cases involving allegations of corruption to be enquired into by the Vigilance Tribunal constituted under the Vigilance Tribunal Rules and some other cases to be prosecuted before the Court of Enquiry Commissioner and Special Judge functioning under the PC Act. The State Government, on finding objectively that there is no relevant material to prosecute a public servant under the PC Act, shall specifically observe in the order passed for referring a case to the Vigilance Tribunal the reasons for not taking recourse to a prosecution under the PC Act against him.

Writ petitions are disposed accordingly.

A.HARIPRASAD,
JUDGE.

N.ANIL KUMAR,
JUDGE.

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APPENDIX OF WP(C) 22684/2014

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	P1. TRUE COPY OF THE FIR IN CRIME NO. VC 3/2011 KKD.
EXHIBIT P2	P2. TRUE COPY OF THE FINAL REPORT IN CRIMENO. VC 3/2011 KKD SUBMITTED BEFORE THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, KOZHIKODE.
EXHIBIT P3	P3. TRUE COPY OF THE GO(P) 344/60/HOME DATED 3-6-1960.
EXHIBIT P4	P4. TRUE COPY OF THE G.O.(P) NO. 14/83/VIG. DATED 7-10-1983 OF THE 3RD RESPONDENT.
EXHIBIT P5	P5.TRUE COPY OF THE G.O.(P) NO. 14/83/VIG. DATED 7-10-1983 OF THE 3RD RESPONDENT.
EXHIBIT P6	P6.TRUE COPY OF THE G.O.(P) NO. 14/83/VIG. DATED 12-5-1992 OF THE 3RD RESPONDENT.
EXHIBIT P7	P7.TRUE COPY OF THE G.O.(P) NO. 14/83/VIG. DATED 25-3-1997 OF THE 3RD RESPONDENT.
EXHIBIT P8	P8.TRUE COPY OF THE G.O.(P) NO. 14/83/VIG. DATED 26-3-1997 OF THE 3RD RESPONDENT.
EXHIBIT P9	P9.TRUE COPY OF THE G.O.(P) NO. 14/83/VIG. DATED 31-3-1997 OF THE 3RD RESPONDENT.
EXHIBIT P10	P10.TRUE COPY OF THE G.O.(P) NO. 14/83/VIG. DATED 71-12-2013 OF THE 3RD RESPONDENT.

APPENDIX OF WP(C) 18325/2015

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	P1:TRUE COPY OF THE FIR IN CRIME NO.VC 3/2007 DATED 08.05.2007 OF VIGILANCE AND ANTI CORRUPTION BUREAU IDUKKI
EXHIBIT P2	P2:TRUE COPY OF THE FINAL REPORT IN CRIME NO.VC 3/2007 OF VIGILANCE POLICE STATION IDUKKI SUBMITTED BEFORE THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, KOTTAYAM
EXHIBIT P3	P3:TRUE COPY OF THE G.O.(P)344/60/HOME DATED 03.06.1960
EXHIBIT P4	P4:TRUE COPY OF THE GO(MS)5251/HOME DATED 21.12.1964
EXHIBIT P5	P5:TRUE COPY OF THE G.O.(P)NO. VIG.DATED OF THE 3RD RESPONDENT
EXHIBIT P6	P6:TRUE COPY OF THE G.O. (P)NO.65/92/VIG.DATED 12.05.1992 OF THE 3RD RESPONDENT
EXHIBIT P7	P7:TRUE COPY OF THE G.O. (P)NO.14/97/VIG.DATED 25.03.1997 OF THE 3RD RESPONDENT
EXHIBIT P8	P8:TRUE COPY OF THE G.O. (P)NO.15/97/VIG.DATED 26.03.1997 OF THE 3RD RESPONDENT
EXHIBIT P9	P9:TRUE COPY OF THE G.O. (P)NO.16/97/VIG.DATED 31.03.1997 OF THE 3RD RESPONDENT
EXHIBIT P10	P10:TRUE COPY OF THE G.O. (MS)NO.40/13/VIG.DATED 02.12.2013 OF THE 3RD RESPONDENT
EXHIBIT P11	P11:TRUE COPY OF THE NOTIFICATION DATED 04.12.2000 PUBLISHED IN THE KERALA GAZETTE (EXTRA ORDINARY) DATED 05.12.2000

RESPONDENTS' EXHIBITS:

EXT.R1(a) TRUE COPY OF THE GO(P)NO.344/60/HOME DATED 03.06.1960
EXT.R1(b) TRUE COPY OF THE GO(MS) NO.525/64/HOME DATED 21.12.1964

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EXT.R1(c) TRUE COPY OF THE CIRCULAR NO.6/75 DATED 2.9.1975

EXT.R1(d) TRUE COPY OF THE GO(P) NO.15/97/VIG. DATED 26.03.1997

EXT.R1(e) TRUE COPY OF THE GO(P) NO.65/92/VIG. DATED 12.05.1992

EXT.R1(f) TRUE COPY OF THE GO(P) NO.18/97/VIG. DATED 05.04.1997

EXT.R1(g) TRUE COPY OF THE NOTIFICATION NO.12094/C1/88/VIG.DATED 2.3.1993

EXT.R1(h) TRUE COPY OF THE NOTIFICATION NO.10058/C1/2000/VIG.DATED 4.12.2000

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