

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 12TH DAY OF JUNE 2020 / 22ND JYAISHTA, 1942

WP(C).No.5006 OF 2020(S)

PETITIONER:

P. P. RAMACHANDRA KAIMAL, AGED 66 YEARS,
LATHA SADANAM, VAZHAPPALLI WEST P.O., CHANGANASSERRY, KOTTAYAM.

BY ADVS.SRI.R.KRISHNA RAJ
SRI.R.PRATHISH
SMT.E.S.SONI
SMT.KUMARI SANGEETHA S.NAIR
SRI.V.R.RAJESH

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT, DEPARTMENT OF HOME,
KERALA GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM .
- 2 DIRECTOR GENERAL AND STATE POLICE CHIEF,
POLICE HEADQUARTERS, THIRUVANANTHAPURAM.
- 3 ACCOUNTANT GENERAL, (GENERAL AND SOCIAL SECTOR AUDIT),
OFFICE OF THE ACCOUNTANT GENERAL, THIRUVANANTHAPURAM.
- 4 COMPTROLLER OF AUDITOR
GENERAL OF INDIA, DEENDAYAL UPADHYAYA MARGE, NEW DELHI 110 124.
- 5 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, HOME DEPARTMENT, NEW DELHI.

R1 & R2 BY SRI.SUMAN CHAKRAVARTHY, SENIOR GOVT.PLEADER
SRI. V. MANU, SENIOR GOVT. PLEADER
SRI. P. NARAYANAN, SENIOR GOVT. PLEADER
R3 & R5 BY SHRI.K.I.MAYANKUTTY MATHER, SC, I.A. AND A.D.
R3 & R4 BY ADV. SRI.V.V.ASOKAN (SR.)
R5 BY ADV. SRI.P.VIJAYAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-03-2020, THE COURT ON 12-06-2020 DELIVERED THE FOLLOWING:

"C.R"

JUDGMENT

Dated this the 12th day of June, 2020

S. Manikumar, C.J.

Instant public interest writ petition is filed seeking the following reliefs:

1. Direct the Union and State Governments to entrust an agency like CBI or NIA with the investigation of the reported shortage of 25 numbers of 5.56 mm INSAS rifles and 12061 live cartridges from the custody of State Police, as reported in Exhibit-P1 by the issue of writ of mandamus or such other writ, order or direction.
2. Direct the State and Union Governments to take immediate action to trace out and recover the missing 5.56 mm INSAS rifles and 12061 live cartridges which is reported to be missing from the custody of State Police as reported in Exhibit-P1 by the issue of a writ of mandamus or such other writ or order or direction.
3. Direct the State and Union Governments to entrust the task of taking physical stock of the entire arms and ammunition of the State Police as recommended in Exhibit-P1 to any Central agency like Central Bureau of Investigation or National Investigation Agency by the issue of a writ of mandamus or such writ or order or direction.

2. Petitioner is a retired person from Coal India Ltd., and a senior citizen. His grievance is that in spite of the fact that 25 numbers of 5.56 mm Indian Small Arms System (INSAS) rifles and 12061 live cartridges are missing

from the custody of police department, no steps are taken by the authorities in tracing and recovering the same. The background facts submitted by the petitioner to substantiate the aforesaid contention is that the Comptroller and Auditor General of India (CAG), New Delhi, respondent No.4, has tabled before the State Assembly the report for the year ended March, 2018. In the said report, at paragraph 2.10.3, physical stock of weapons and live cartridges with the Special Armed Battalion, Thiruvananthapuram, was found to be short. Respondent No.4 has also reported that joint physical verification was conducted in the Special Armed Battalion on 16.10.2018, to find out whether the physical stock of arms and ammunition tallied with the stock register and whether the system of accounting of arms and ammunition was robust and reliable. The joint verification conducted in the Arms of SAP Battalion along with the Assistant Commandant of the Battalion revealed shortage of 25 nos. of 5.56 mm rifles and 12061 live cartridges, which include 1835 cartridges for INSAS and 1578 for AK-47. It was also reported that out of the 1261 missing cartridges, 250 numbers of 9 mm drill cartridges were replaced by dummy cartridges and the report further reveals that the shortage of cartridges is from the year 2000 onwards.

3. The case projected by the petitioner is that even though explanations as sought for by the concerned officials were given regarding missing of rifles

to the effect that the rifles were issued to Armed Reserve Camp, Thiruvananthapuram, in February, 2011 under proper acknowledgement and that the errors shown in the maintenance records/receipts have been found and sorted out, the 4th respondent in consequence, required the details, including the body numbers of 660 rifles, stated to have been received from the police chief stores and the distribution to various units under permanent transfer, no appropriate reply is given. It is, therefore, submitted by the petitioner that there is suspicion existing regarding the actual situation of arms and ammunition, which were reported to be missing by the 4th respondent. It is also a serious security breach and the matter involves security of the nation and the people of the State, especially in the light of the fact that the nation is under serious threat of terrorists, including maoists and ISIS, and there are several intelligent reports that infiltration has been done by the agents of these groups in the civil society.

4. The 1st respondent - State of Kerala, has filed a detailed counter affidavit refuting the averments contained in the writ petition. It is contended that the report of the third respondent for the year ending 31.03.2018 of General and Social Sector, Government of Kerala (Report No.4 of 2019) was laid on the table of the house on 12.02.2020 during the 18th session of the 14th Kerala Legislative Assembly as contemplated under Article 151(2) of the

Constitution of India. The report has to be considered by the Committee on Public Accounts as per the rules of procedure, and conduct of business in the Kerala Legislative Assembly framed under Article 208 of the Constitution. That apart, it is contended that a crime is already under investigation by the Crime Branch Wing of the State Police. After the CAG report, it was also felt that allegation of missing of rifles might be connected with missing of cartridges and, therefore, the team started investigation in that angle also. The Investigation Team conducted inspection on 17.02.2020 at SAP Camp, Thiruananthapuram in the presence of Director, Crime Branch and Inspector General of Police, Crime Branch, and physically verified each and every INSAS rifle issued from the Police Chief Store to the SAP Battalion during 2005-2016 by comparing the body number of the rifles. Accordingly, it was found that no INSAS rifle is missing, as mentioned in the CAG report. That apart, out of the 660 rifles issued from the Police Chief Store, 647 were physically available in the camp and the balance 13 were reportedly sent to Manipur for training purpose of Indian Reserve Battalion trainees vide order dated 16.01.2020 and those rifles were also personally verified with the body numbers through video conferencing. During the course of investigation, one accused was arrested and the investigation is proceeding effectively under the direct supervision of the Director, Crime Branch and IGP, Crime Branch.

5. Further, the Deputy Inspector General of Police, Armed Police Battalion also conducted a detailed inspection and given a report on 13.02.2020 to the Director General and State Police Chief, Thiruvananthapuram, 2nd respondent, concluding that,- each and every INSAS rifles allocated to SAP have been physically verified and accounted by them. The whole issue of the missing of rifles happened due to the refusal by the Comptroller and Auditor General Team to account for the 25 rifles transferred temporarily from SAP to Thiruvananthapuram city on 14.02.2011, despite the fact that the concerned record shown to them. So also, it is stated that report of Comptroller and Auditor General (CAG) is taken into consideration by the Public Accounts Committee and Committee on Public Undertakings, which are special committees constituted by the Parliament of India and the State Legislature. It is further submitted that the CAG's report is always subject to parliamentary debates and it is possible that the Public Accounts Committee can accept the objection of the ministry to the CAG's report, or reject the report of the CAG. It is also pointed out that the issue was considered by the Hon'ble Supreme Court in various judgments and held that it is for the Legislature to decide whether after receiving the report of the PAC to make its comments on the report of CAG. It is finally contended that petitioner has not made out any case justifying interference by this Court and, therefore, he is

not entitled to get any reliefs as sought for in the writ petition.

6. A reply affidavit is filed by the petitioner reiterating the stand adopted in the writ petition. It is stated that even if it is admitted that no arms are missing when inspection was conducted by the Crime Branch, it is a serious matter, since the arms were missing when CAG conducted joint physical verification and it is not explained as to where the arms have gone, when they conducted the joint physical verification.

7. Heard learned counsel for the parties and perused the material available on record.

8. Based on the above grounds, Mr. R. Krishna Raj, learned counsel for the petitioner, addressed arguments. Mr.C.P.Sudhakara Prasad, learned Advocate General for the State, submitted that petitioner has not made out a case for securing any relief of CBI investigation in the matter, since the subject issues raised are within the realm of the Legislature of the State, since the report of the CAG is placed before the Legislature for appropriate action and the Public Accounts Committee and the Public Undertakings Committee are considering the report of CAG. It is pointed out that the realm of interference of a Constitutional Court was considered by the Hon'ble Apex Court in various writ petitions as well as other proceedings, and held that the issue with respect to the report of the CAG is a matter for consideration of the

Parliament and State Legislatures, and the interference of the Constitutional Courts would be slow in such matters.

9. We have evaluated the rival submissions made across the bar. Looking at the frame work of the Constitution of India, one thing is very definite that there is a clear segregation of power by and between the Legislature, the executive and judiciary. Article 208 of the Constitution of India deals with rules of procedure and clause (1) thereto states that a House of Legislature of a State may makes rules for regulating, subject to the provisions of the Constitution, its procedure and the conduct of its business. Article 212 of the Constitution states that Courts not to inquire into proceedings of the Legislature and clause (1) thereto provides that the validity of any proceedings in the Legislature of the State shall not be called in question on the ground of any alleged irregularity of procedure. Article 148 in Chapter V of Part V deals with Comptroller and Auditor-General of India, which read thus:

- “(1) There shall be a Comptroller and Auditor General of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in like manner and on the like grounds as a Judge of the Supreme Court.
- (2) Every person appointed to be the Comptroller and Auditor General of India shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that

behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(3) The salary and other conditions of service of the Comptroller and Auditor General shall be such as may be determined by Parliament by law and, until they are so determined, shall be as specified in the Second Schedule: Provided that neither the salary of a Comptroller and Auditor General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(4) The Comptroller and Auditor General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.

(5) Subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor General.

(6) The Administrative expenses of the office of the Comptroller and Auditor General, including all salaries, allowances and pensions payable to or in respect of persons serving in that office, shall be charged upon the Consolidated Fund of India."

10. Articles 149 to 151 of the Constitution of India, relevant for the purpose of this case, are extracted hereunder:

"149. Duties and powers of the Comptroller and Auditor General.--The Comptroller and Auditor General shall

perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively.

150. Form of accounts of the Union and of the States.-- The accounts of the Union and of the States shall be kept in such form as the President may, on the advice of the Comptroller and Auditor General of India, prescribe.

151. Audit reports.--(1) The reports of the Comptroller and Auditor General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament

(2) The reports of the Comptroller and Auditor General of India relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State."

11. From the reading of Article 148 of the Constitution of India, it is explicit and unequivocal that, CAG is an authority designed to function independently and submit reports to the President of India and Governor of the State, so as to have a comprehensive view of the governance of the Union and the States. It is also significant to note that such a feature is incorporated

in the Constitution of India, in order to maintain a healthy relationship by the Union Government and the federal States. Reading of Article 149, makes it clear that the Comptroller and Auditor General shall perform such duties and exercise such powers in relation to the accounts of the Union and the States and of any other authority or body as may be prescribed by or under any law made by the Parliament. Article 151 prescribes that the reports of the Comptroller and Auditor General of India relating to the accounts of Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament, and clause (2) thereto provides that the reports of the Comptroller and Auditor General of India relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State.

12. Our attention is also invited by the learned Advocate General to the Regulations on Audit and Accounts, 2007, enacted in pursuance of Section 23 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971, regulation 2(5) deals with audit, which recites that "audit means examination of accounts, transactions and records in performance of duties and exercise of powers of the Comptroller and Auditor General as prescribed in the Constitution of India and the Act and includes performance audit or any other type of audit determined by the Comptroller and Auditor

General of India. When used as a noun, it refers to Audit Department as a whole or any part thereof as per context". Regulation 2(14) deals with Audit report of the Comptroller and Auditor General to mean "a report of the Comptroller and Auditor General of India under Article 151 of the Constitution of India or under Section 19A of the Act or under Section 49 of the Union Territories Act, 1963".

13. So much so, by virtue of the powers conferred under Article 208 of the Constitution of India, Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly have been framed. Rule 242 of the said rules deals with the functions of the Committee on Public Accounts and the same is extracted hereunder:

"242. (1) There shall be a Committee on Public Accounts for the examination of accounts showing the appropriation of sums granted by the Assembly for the expenditure of the Government of Kerala, the annual finance accounts of the Government of Kerala and such other accounts laid before the Assembly as the Committee may think fit.

(2) In scrutinising the Appropriation Accounts of the Government of Kerala and the Report of the Comptroller and Auditor General thereon, it shall be the duty of the Committee to satisfy itself,-

(a) that the moneys shown in the accounts as having been disbursed were legally available for, and applicable to,

the service or purpose to which they have been applied or charged :

(b) that the expenditure conforms to the authority which governs : and

(c) that every re-appropriation has been made in accordance with the provisions made in this behalf under Rules framed by competent authority.

(3) It shall also be the duty of the Committee-

(a) to examine the statements of accounts showing the income and expenditure of state corporation, trading and manufacturing schemes, concerns and projects together with the balance sheets and statements of profit and loss account which the Governor may have required to be prepared or are prepared under the provisions of the statutory Rules regulating the financing of a particular corporation, trading or manufacturing scheme or concern or project and the Report of the Comptroller and Auditor General thereon :

(b) to examine the statements of accounts showing the income and expenditure of autonomous and semi-autonomous bodies, the audit of which may be conducted by the Comptroller and Auditor General either under the direction of the Governor or by a Statute of the Legislature; and

(c) to consider the report of the Comptroller and Auditor General in cases where the Governor may have required him to conduct an audit of any receipts or to examine the accounts of stores and stocks.

(4) If any money has been spent on any service during a financial year in excess of the amount granted by the

Assembly for the purpose, the Committee shall examine with reference to the facts of each case the circumstances leading to such an excess and make such recommendations as it may deem fit :

Provided that the Committee shall not exercise its functions in relation to such Public Undertakings specified in the Fourth Schedule and such other public undertakings as may be notified by the Government as such from time to time:

Provided further that the committee shall not exercise its functions in relation to:-

(a) the statement of accounts showing the income and expenditure of all Municipal corporations, Municipalities, Panchayats, Universities, Development Authorities and such other Local Authorities or a Local Fund included in the Schedule under section 3(1) of the Kerala Local Fund Audit Act, 1994 (Act 14 of 1994) ;

(b) the Reports of the Comptroller and Auditor General of India relating to the accounts of the Local Self Government Institutions, which are laid annually before the Legislative Assembly ; and

(c) such other functions in respect of the Audit Reports of the Local Bodies audited by the Comptroller and Auditor General of India, as may be assigned to the Committee of Local Fund Accounts by the Speaker from time to time."

14. Sub-rule 3(c) thereunder states that the Committee shall consider the report of the CAG, in cases where the Governor may have required him to conduct an audit of any receipts or to examine the accounts of stores and

stocks. Thus, on a harmonious reading of the provisions of Articles 148 to 151 and Rule 242 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly, it is explicit that once a report is submitted by CAG to the Governor, it has to be placed before the Legislative Assembly and the Committee of Public Accounts of the Legislative Assembly has to look into the matter and examine the accounts of stores and stocks. This is exactly the case put forth by the State Government in their counter affidavit. Therefore, we are of the view that, since the subject matter is under consideration of the Public Accounts Committee, writ petition itself is premature and that the petitioner is not at liberty to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

15. As we have pointed out earlier, since there is a clear segregation of powers delineated in respect of the functions to be discharged by each of the three organs under the Constitution of India, in the Constitution itself, the realm of interference of this Court under Article 226 is limited with regard to the matters that are to be considered by the State Legislature, in accordance with the provisions of the Constitution and the Rules of Procedure for the Conduct of the Business framed by the Kerala Legislative Assembly. That said, the report of CAG is to enable the Legislature to oversee the functions of the Government as such and, therefore, it is for the Legislature to take necessary

action, in accordance with the report of CAG, or to recommend the Government to take action on the basis of the findings rendered by the Public Accounts Committee after due discussion in the floor of the Assembly. Looking from that angle, it is clear that the subject issue is under consideration of the competent authority within the framework of Constitution of India, persuading this Court to think deeply as to whether any interference at this stage would be justified.

16. In order to have a logical conclusion, some of the judgments rendered by the Hon'ble Supreme Court as well as this Court would be relevant.

17. In **Arun Kumar Agarwal v. Union of India & Ors.** [(2013) 7 SCC 1], the Hon'ble Apex Court considered the question with respect to the scope of judicial review, in the absence of violation of law by the State and its instrumentalities and held thus:

"66. We have referred to the report of the CAG, the role of the PAC and the procedure followed in the House, only to indicate that the CAG report is always subject to scrutiny by the Parliament and the Government can always offer its views on the report of the CAG.

67. The question that is germane for consideration in this case is whether this Court can grant reliefs merely placing reliance on the CAG's report. The CAG's report is always subject to

parliamentary debates and it is possible that PAC can accept the ministry's objection to the CAG report or reject the report of the CAG. The CAG, indisputably is an independent constitutional functionary, however, it is for the Parliament to decide whether after receiving the report i.e. PAC to make its comments on the CAG's report.

68. We may, however, point out that since the report is from a constitutional functionary, it commands respect and cannot be brushed aside as such, but it is equally important to examine the comments what respective ministries have to offer on the CAG's report. The ministry can always point out, if there is any mistake in the CAG's report or the CAG has inappropriately appreciated the various issues. For instance, we cannot as such accept the CAG report in the instance case."

18. In **Pathan Mohammed Suleman Rehmatkhan v. State of Gujarat and Others** [(2014) 4 SCC 156], the Hon'ble Apex Court considered the comments made in the Comptroller and Auditor General's report on the action of the State Government in not adopting a uniform policy of alienation and allotment of lands to the Gujarat International Finance Tech-city Company and, at paragraph 10, held as follows:

"10. The CAG is a key figure in the system of parliamentary control of finance and is empowered to delve into the economy, efficiency and effectiveness with which the departmental authorities or other bodies had used their resources in discharging their functions. CAG is also the final

audit authority and is a part of the machinery through which the legislature enforces the regulatory and economy in the administration of public finance, as has been rightly pointed out by the High Court. But, we cannot lose sight of the fact that it is the Government which administers and runs the State, which is accountable to the people. State's welfare, progress, requirements and needs of the people are better answered by the State, also as to how the resources are to be utilized for achieving various objectives. If every decision taken by the State is tested by a microscopic and a suspicious eye, the administration will come to stand still and the decisions - makers will lose all their initiative and enthusiasm. At hindsight, it is easy to comment upon or criticize the action of the decision maker. Sometimes, decisions taken by the State or its administrative authorities may go wrong and sometimes it may achieve the desired results. Criticisms are always welcome in a Parliamentary democracy, but a decision taken in good faith, with good intentions, without any extraneous considerations, cannot belittled, even if that decision was ultimately proved to be wrong."

19. In **Arvind Gupta v. Union of India and Others** [(2013) 1 SCC 393], the Hon'ble Apex Court had considered the constitutionality of the Comptroller and Auditor General Act, 1971 vis-a-vis the powers of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 and held as follows:

“3. CAG's function to carry out examinations into economy, efficiency and effectiveness with which Government has used its resources is inbuilt in the 1971 Act. Performance audit reports prepared under the Regulations have to be viewed accordingly. We find no unconstitutionality in the Regulations. More - over Art.151 of the Constitution provides that the reports of CAG relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament and the reports relating to the accounts of a State shall be submitted to the Governor of the State who shall cause them to be laid before the Legislature of the State. The audit reports, which are submitted by CAG are, thus, subject to scrutiny by the Parliament or the Legislature of the State, as the case may be.”

20. So also, a learned single Judge of this Court in **Kallara Sukumaran v. Union of India** [1994 (2) KLT 448], had occasion to consider the purport of Article 151 of the Constitution of India, dealing with audit reports of the Comptroller and Auditor General, relating to accounts of the State and held that the Court cannot interfere with the consideration of the report by the State Legislature. After conducting a detailed survey of the judgments rendered by the Hon'ble Apex Court on various issues, at paragraph 5, the learned Judge held thus:

“5. The question to be decided is as to what is the power of the Court to give any directions on the basis of such a report

alone. As stated earlier, the C.A.G. is entitled to audit and submit a report in regard to any department of a State. Art.151 of the Constitution of India provides as follows:

"151. Audit reports.- (1) The report of the Comptroller and Auditor General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament.
(2) The reports of the Comptroller and Auditor-General of India relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State."

Under Clause (2) of the aforesaid Article, the reports of the C.A.G. relating to the accounts of a State shall be submitted to the Governor of the State who shall place them before the Legislature of the State. No further provision is made in the Constitution in regard to the matter. It can thus be seen that a report prepared by the C.A.G. has to be placed before the Legislature and when once the Constitution provides that it shall be placed before the Legislature which is one of the three supreme authorities of the State, it implies that it is primarily for the Legislature to consider and act upon such report. The placing of the report before the Legislature as provided for under Art.151 of the Constitution of India is not meant to be an empty formality but it implies that it is the Legislature which has to scrutinise the report and take any further action, if necessary. Laying the report before the Legislature would be meaningless unless the Legislature has the power to examine the same and the Constitution does not in any way limit that power. Accordingly

under the rule of procedure, the report has to be scrutinised by the Public Accounts Committee or by the Public Undertakings Committee constituted by the State Legislature which are having the same powers. As observed in Practice and Procedure of Parliament by M.N. Kaul and S.L. Shakhder, Third Edition, page 698:

"The functions of the Committee extend 'beyond the formality of expenditure to its wisdom, faithfulness and economy' The Committee thus examines cases involving losses, nugatory expenditure and financial irregularities. When any case of proved negligence resulting in loss or extravagance is brought to the notice of the Committee the Ministry concerned is called upon to explain as to what action, disciplinary or otherwise, has been taken to prevent a recurrence. In such cases the Committee also records its opinion either disapproving the action of Government or passing strictures against the extravagance or lack of proper control by the Ministry or Department concerned."

The Public Accounts Committee or the Public Undertakings Committee shall also examine the report with reference to the facts of each case and the circumstances leading to any irregularity and make such recommendations as it may deem fit. The Public Accounts Committee has also the power to take evidence in the matter and call for explanations from the concerned Departments. It is observed by Basu in his commentary on the Constitution of India, Sixth Edition, at page 59, as follows:

"The exercise of this function gives the Committee a comprehensive power of survey over the entire scheme of expenditure of the government as well as the administration. Though the Committee has nothing to question the policies of the Government, it has to scrutinise the implementation of the policies through its review of the expenditure. Both in England as well as in India, it has been acknowledged that the present function includes a criticism of extravagant or wasteful expenditure of public money, in general and in this connection, it is entitled to point out the weak points in the administration of the Departments concerned, and also to ensure that proper action has been taken against delinquents guilty of irregularity or breach of the rules, though it has no power to enforce its comments by any direct administrative action".

As stated earlier, Art.151 of the Constitution of India mandates that the reports of the C.A.G. relating to the accounts of a State shall be submitted to the Governor of the concerned State who shall cause them to be laid before the Legislature of the State. As I read that Article, the intention of the Constitution makers is clear that it is primarily for them to consider the report and take any follow up action that is necessary, by referring the matter to the Public Accounts Committee or the Public Undertakings Committee, as the case may be. That being the mandate contained in the Constitution of India, I do not think that the Court can interfere in the matter at this stage; and it is too premature to say one way or the other in regard to the allegations made by the petitioner. I do not find my way to

accept the contention of the petitioner that even at this stage the Court is entitled to intervene. The decisions of the Hon'ble Supreme Court relied on by counsel for the petitioner, *State of U.P. v. Raj Narain 1975 (4) SCC 428 and Fertilizer Corpn. Kamagar Union v. Union of India (AIR 1981 SC 344)* have no relevance at this stage. Accordingly, I do not find any reason to interfere in the matter, in exercise of my power under Art.226 of the Constitution of India."

21. Bearing in mind the legal principles evolved through exponential equations of the Constitutional courts as regards the power enjoyed by the Parliament and the State Legislature, as the case may be, it could be seen that there is a clear procedure under the Constitution and the laws, for dealing with a situation like the one on hand, which means that, the subject issue is absolutely within the domain of the State Legislature, and thereby creating a distinct fetter and barrier, from any interference at this stage of proceedings by this Court.

22. Moreover, it is evident from the counter affidavit filed by the State that on physical verification, no rifles are lost and the said statement for and on behalf of the State is not materially disputed by the petitioner in his reply affidavit. So also, a case has been registered by a specialised agency of the police department in respect of the missing live cartridges. That apart, questions relating to missing of rifles as putforth by the petitioner and the

verification done by State officials, as well as the CAG are all factual circumstances, which cannot be deciphered by this Court at this juncture with the least materials produced by the petitioner in this writ petition. We are also of the view that it is a subject matter of consideration before the State Legislature, and especially the Public Accounts Committee constituted as per the Rules of Procedure for the Conduct of Business in the Kerala Legislative Assembly, and it may not be appropriate at all for this Court to interfere with the proceedings pending before the State Legislature.

In the light of the above discussion and well settled legal position on the point, we are of the considered view that no grounds are made out by the petitioner for interference under Article 226 of the Constitution of India. Writ petition has no sustenance and accordingly, dismissed. No costs.

Sd/-
S. Manikumar
Chief Justice

Sd/-
Shaji P. Chaly
Judge

krj

W.P.(C) No.5006 of 2020

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APPENDIX

PETITIONERS/S EXHIBITS:

EXHIBIT P1

COPY OF THE RELEVANT PAGES OF THE REPORT OF THE 4TH
RESPONDENT DATED 28.01.2020

RESPONDENTS' EXHIBITS:- NIL