

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 23RD DAY OF FEBRUARY 2022 / 4TH PHALGUNA, 1943

WP(C) NO. 5601 OF 2012

PETITIONER:

DR. SUBRAMANIAN SWAMY

AGED 72 YEARS

S/O.SITARAM SUBRAMANIAN, A-77, NIZAMUDDIN (EAST),
NEW DELHI-110 013.

BY ADV DR. SHRI. SUBRAMANIAN SWAMY

RESPONDENTS:

- 1 V.N. NARAYANAN
S/O.NEELAKANDAN NAMBOOTHIRI, VENATT MANA, THRISSUR-5.
- 2 VASUDEVAN.V.
S/O.NEELAKANDAN NAMBOODIRI, VENATTMANA, THRISSUR-5.
- 3 THE CONSUMER DISPUTES REDRESSAL FORUM, THRISSUR-3.

BY ADVS.

SRI.K.N.PADMAKUMAR

R1 BY KARTHIK BHAVADASAN

SMT.VIDYA KURIAKOSE, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
17.02.2022, THE COURT ON 23.2.2022 DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

W.P.(C) No. 5601 of 2012

Dated this the 23rd day of February, 2022

J U D G M E N T

The above writ petition is filed with the following prayers:

i) issue a writ of Certiorari or any other appropriate writ, order or direction quashing the proceedings in EA 22 /2008 in OP No. 126/1996 and EA 23/2008 in OP No. 125/1996 on the files of CDRF, Thrissur as against the petitioner;

ii) issue a writ of mandamus or any other appropriate writ, order or direction commanding the 3rd respondent not to proceed against the petitioner to enforce Exhibit P3 common order dated 24.4.1996 in OP No. 125/1996 and OP No. 126/1996 on the files of CDRF, Thrissur;

iii) pass such other order or direction which this Hon'ble Court may deem fit and proper to grant in the circumstances of the case

and

iv) award costs. *[SIC]*

2. The petitioner is a politician and a social worker. He is a former Minister for Commerce, Law & Justice of the Union of India for the period 1990-91 and is also a lawyer by profession. He was also the Chairman, of the Commission on

Labour Standards and International Trade for the period 1994-96, a Member of Parliament for the period 1974-99, Professor of Economics, Indian Institute of Technology, Delhi for the period 1969-91, and Faculty of Harvard University for the period 1963-69, 1971, 1985-86 & 2001-2008 Summer Courses. The petitioner was also the President of the Janata Party.

3. Petitioner was the Chairman of the Express (Malayalam) (P) Ltd., a company engaged in the field of print media. Admittedly, the Express (Malayalam)(P) Ltd has been ordered to be wound up by this Court as per order dated 22.5.2003 in CP No.25 of 1994. The petitioner came to know about a news article published in IBN website, which is produced as Ext P1 in the writ petition, wherein it is stated that the Consumer Dispute Redressal Forum, Thrissur (for short CDRF) has issued a non-bailable warrant of arrest against the petitioner in a case of alleged nonpayment of money deposited by an investor in the year 1986 with the Express (Malayalam)(P)Ltd. in which the petitioner was the Chairman. The petitioner submitted an

application under the provisions of the Right to Information Act to get details regarding the proceedings of the CDRF. Ext P2 is the application and Ext P2(a) is the reply received by the petitioner. Along with Ext P2(a), the petitioner was served with a copy of the proceedings of the CDRF. From the records, the petitioner came to know that the respondent Nos. 1 and 2 in this writ petition filed OP No.125 of 1996 and OP No.126 of 1996 before the CDRF, Thrissur for return of amount allegedly deposited by them with M/s. Express (Malayalam)(P) Ltd. The petitioner was not made as a respondent in his personal capacity in those Original Petitions and he was described as the person representing the Express (Malayalam) (P) Ltd. in the capacity of its Chairman. Ext P3 is the common order passed by the CDRF. According to the petitioner, he never entrusted any lawyer to appear on his behalf before the CDRF and he has not received any notice from the CDRF in connection with the above proceedings. But in Ext P3, it is stated that a lawyer has entered appearance and filed vakalath on behalf of the respondent Nos. 1 and 2 in the O.P. According to the petitioner,

he never engaged any lawyer to appear and defend him. In Ext P2, the petitioner requested to furnish the vakalath executed by the petitioner which is produced by the lawyer before the CDRF. But as per Ext P2(a), it is informed that the same is not available with the CDRF. The petitioner apprehends some malpractice that had taken place before the CDRF. Ext P4 and P5 will show that a nonbailable warrant is issued against the petitioner. Ext P6 will show that the notice in the Execution Petition was returned unserved. Thereafter warrant is issued as evident by Ext P7. It is the case of the petitioner that the entire proceedings initiated against the petitioner by the CDRF are without notice to the petitioner and the orders are passed behind the back of the petitioner. Hence, this writ petition.

4. The petitioner appeared in person through video conference. Heard Dr.Subramanian Swamy and the counsel appearing for respondents Nos.1 and 2.

5. Dr.Subramanian Swamy submitted that no notice is received by him from the CDRF and therefore, the proceedings against the petitioner based on Ext P3 orders are

unsustainable. Dr.Swamy also submitted that a perusal of Ext P2(a) reply received from the CDRF, it is clear that no vakalath is filed on behalf of him before the CDRF. Therefore, Dr.Swamy submitted that Ext P3 is an order passed without hearing him and the same is not binding on him. Dr.Swamy also submitted that since Ext P3 order is passed without hearing him, all further proceedings against him to execute Ext P3 order is also unsustainable. Moreover, Swamy also takes me through Section 446 of the Companies Act, 1956. He submitted that when a winding-up order has been made, or the official liquidator has been appointed as provisional liquidator, no suit or other legal proceedings shall be commenced or if pending at the date of winding up order, which shall be proceeded against the company except by leave of the tribunal. Dr.Swamy submitted that the company petition was filed in 1994 before this Court as CP No.24 of 1994 by the Lord Krishna Bank. Subsequently, in 1996 OP 125 of 1996 and OP 126 of 1996 were filed before the CDRF and the CDRF passed Ext P3 order on 24.4.1996. On 22.5.2003, this Court passed a winding-up

order and on 16.6.2008 the liquidation proceedings commenced. Dr.Swamy also takes me through Ext P5 proceedings of the CDRF from which it is clear that CDRF is aware of the pendency of the liquidation proceedings because the same is noted in the proceedings dated 16.6.2008 in Ext P5. Dr.Swamy also relied on the judgment of the apex court in **Harihar Nath and others v. State Bank of India and others (2006)4 SCC 457** and contended that the object of Section 446 of the Companies Act is to save the company which has been ordered to be wound up from unnecessary litigation and a multiplicity of proceedings and to protect the assets for equitable distribution among the creditors and shareholders. Dr.Swamy submitted that the proceedings against the petitioner based on Ext P3 order are unsustainable, especially in the light of the fact that the company itself is wound up as per orders of this Court long back.

6. On the other hand, Advocate Karthik Bhavadasan, who appeared for the 1st respondent submitted that the writ petition is not maintainable for two reasons. The counsel submitted

that if the petitioner is aggrieved by Ext P3 order or the orders passed by the CDRF in the execution proceedings, the petitioner has got an alternative remedy as per the Consumer Protection Act, 1986. Without availing of the alternative remedy, the petitioner is invoking the powers of this court under Article 226 of the Constitution of India. Therefore, the Writ Petition is not maintainable is the first submission. Secondly, Advocate Karthik also submitted that the petitioner is in effect challenging two orders passed by the CDRF in OP No. 125 of 1996 and OP No.126 of 1996 in one writ petition. The counsel submitted that the petitioner ought to have filed two writ petitions by paying two separate court fee. Therefore, the writ petition is not maintainable on that ground also. Thereafter, the counsel also argued that as long as Ext P3 order is in force, the petitioner is liable to pay the amount. The counsel submitted that there is entry in Ext P3 order to the effect that the petitioner was represented through a counsel and there is nothing to interfere with that finding without any evidence.

7. This court considered the contention of the petitioner and the respondents. It is true that this Court in **Controller Of Examinations, Kannur & another v Sreya N (2021(5) KLT 560)** observed that when there is an alternative remedy as per the Consumer Protection Act, a party in a proceedings at the Consumer Forum has to avail the alternative remedies available as per the Consumer Protection Act and in such situation, a writ petition is not maintainable. But this writ petition was filed in 2012. The writ petition was admitted on 7.3.2012 and the proceedings of the CDRF was stayed for a period of three months on 7.3.2012 and it was subsequently extended until further orders. This writ petition is pending before this Court for the last ten years. At this distance of time, it is not proper to relegate the petitioner to approach the appellate forum to redress his grievance. Moreover, it is a settled position that once the writ petition is admitted, the maintainability question need not be considered subsequently except in certain situations. Moreover, the petitioner has got a definite case that Ext P3 order is passed by the CDRF without

issuing notice to him. When a contention is raised before this Court about the violation of natural justice, this Court can invoke its discretionary power under Article 226 of the Constitution of India, even if an alternative remedy is available to the parties. Therefore, the contention of the 1st and 2nd respondents regarding the maintainability is to be rejected.

8. The 2nd point raised by the 1st and 2nd respondents is that a proper court fee is not paid because the petitioner is challenging two orders of CDRF in one writ petition. I perused the prayers in the writ petition. In the prayer portion of the writ petition, there is no relief sought by the petitioner to set aside Ext P3 common order dated 24.4.1996 in OP No.125 of 1996 and O.P No.126 of 1996. The prayer is not to proceed against the petitioner to enforce Ext P3 common order. In such circumstances, according to me, the petitioner need not file two writ petitions as contended by the 1st and 2nd respondents.

9. As far as the merit of the case is concerned, it is an admitted fact that the petitioner was the Chairman of the Express (Malayalam)(P) Ltd. It is also an admitted fact that a

company petition was filed before this Court by the Lord Krishna Bank in 1994 as CP No.25 of 1994. When the company petition was pending OP No.125 of 1996 and OP No.126 of 1996 was filed before the CDRF. Section 446 of the Companies Act 1956 reads like this:

446. Suits Stayed on Winding Up Order: (1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Tribunal and subject to such terms as the Tribunal may impose. (2) The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of - (a) any suit or proceeding by or against the company; (b) any claim made by or against the company (including claims by or against any of its branches in India) ; (c) any application made under section 391 by or in respect of the company ; (d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company; whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960. (3) 3 [***] (4) Nothing in sub-section (1) or sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a high Court.

10. The apex court in ***Harihar Nath's*** case (supra) observed in paragraph 18 like this:

XXX XXX XXX

18. The object of S.446 of the Act is not to cancel , nullify or abate any claim against the company. Its object is to save the

company which has been ordered to be wound up, from unnecessary litigation and from multiplicity of proceedings and protect the assets for equitable distribution among its creditors and shareholders. This object is achieved by compelling the creditors and others to come to the court which is winding up the company and prove their claims in the winding up. For this purpose, all suits and proceedings pending against the company are also stayed subject to the discretion of the winding up court to allow such suits and proceedings to proceed. When a winding up order is passed, the effect is that all the affairs pertaining to the company in liquidation, including all suits/proceedings by or against the company, come within the control and supervision of the winding up court. The winding up court has to decide whether it will let the suit/proceeding to continue in the court where it is pending, or it will itself adjudicate the suit/proceeding. Thus, under S.446(1), the winding up court only decides about the forum where the suit has to be tried and disposed of. The Limitation Act which prescribes the periods within which a party can approach a court seeking remedies for various causes of action, is not attracted to such applications under S.446(1) of the Act. However, as elaborate arguments were advanced on this issue, we will deal with them in some more detail.

(underline supplied)

11. Admittedly, as per the decision reported in **Lord Krishna Bank Ltd. v. Express (Malayalam)(P) Ltd. 2003(2) KLT 831**), the Company Petition No.25 of 1994 was allowed and the Company Express (Malayalam)(P) Ltd. is ordered to be wound up. The official liquidator was appointed as the liquidator of the company and the official liquidator was directed to take over possession of assets and records of the company. This judgment was delivered by this Court on

22.5.2003. A perusal of Ext P5 proceedings sheet of CDRF and the order dated 16.6.2008 will show that CDRF was aware of the liquidation proceedings as on that date. In such circumstances, the CDRF erred in issuing proceedings against the petitioner.

12. Moreover, I also perused Exts P2 & P2(a) produced in this writ petition. Ext P2 is an application submitted by the petitioner under the Right to Information Act, in which question No.3 is to furnish a copy of the vakalathnama purportedly signed by the petitioner which is endorsed in Ext P3 order. The CDRF as per Ext P2(a) replied that the same is not available. The petitioner has got a definite case that he has not received any notice from the CDRF. The petitioner was the former Minister of Law and Justice of the Union of India. It is a well known fact that he is a politician and he was a Member of the Parliament also. This Court need not disbelieve the version of the petitioner that he has not received any notice from the CDRF. Moreover, as per Ext P2(a), it is clear that even the vakalath executed by the petitioner which is alleged to be

produced is not available with CDRF. That itself shows that there is some error in Ext P3 order about the appearance of a lawyer on behalf of the petitioner. The petitioner is definite that he never engaged a lawyer and as per Ext P2(a) it is clear that a vakalathnama alleged to be executed by the petitioner is not available with CDRF. If that is the case, it can be presumed that Ext P3 order is passed without giving an opportunity of hearing to the petitioner and it is an order passed behind his back. Based on Ext P3, the warrant is issued against the petitioner, the same is unsustainable. Therefore, the contentions of the petitioner are to be accepted and this writ petition is to be allowed.

Therefore, this writ petition is allowed in the following manner.

1. All further proceedings in EA 22 of 2008 in OP No.126 of 1996 and EA No.23 of 2008 in OP No.125 of 1996 on the file of Consumer Disputes Redressal Forum, Thrissur including the warrant issued against the petitioner are quashed.

2. The 3rd respondent shall not proceed against the petitioner to enforce Ext P3 common order dated 24.4.1996 in OP No.125 of 1996 and OP No.126 of 1996.

Sd/-

P.V.KUNHIKRISHNAN, JUDGE

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APPENDIX

PETITIONER'S EXTS:

Exhibit P1: True copy of the news article published in IBN website

Exhibit P2: True copy of the application dtd. 2.1.2012 filed under the provisions of Right to Information Act

Exhibit P2(a): True copy of the reply dated 10.1.2012 issued by the Public Information Officer, CDRF, Thrissur

Exhibit P3: True copy of the common order dated 24.4.1996 passed by the 2nd respondent CDRF, Thrissur in OP Nos. 125/1996 and 126/1996

Exhibit P4: True copy of the order sheet in EA No. 23/08 in OP No. 125/1996

Exhibit P5: True copy of the order sheet in EA No. 22/08 in OP No. 126/1996

Exhibit P6: True copy of the report of the CPO, East Police Station, Thrissur

Exhibit P7: True copy of the warrant of arrest issued under Section 70 of the Code of Criminal Procedure read with Section 27 of the Consumer Protection Act, 1986 in EA No. 22/08

RESPONDENTS EXTS:

EXT.R1(A): COPY OF THE NEWS PAPER 'NEW INDIA TIMES' DTD APRIL 2012

/TRUE COPY/

P.S.TO JUDGE

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