

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

**WEDNESDAY, THE 12TH DAY OF JUNE 2024 / 22ND JYAISHTA,
1946**

OP(CRL.) NO. 305 OF 2024

**AGAINST THE ORDER/JUDGMENT DATED 10.10.2023 IN CRMP
NO.871 OF 2023 OF ENQUIRY COMMISSIONER& SPECIAL
JUDGE, THRISSUR**

PETITIONER/S:

**THE STATE OF KERALA REPRESENTED BY THE DEPUTY
SUPERINTENDENT OF POLICE
VIGILANCE AND ANTI CORRUPTION BUREAU, THRISSUR
UNIT, PIN - 680022
BY SRI A RAJESH SPL GP (VIGILANCE)**

RESPONDENT/S:

**MURALEEDHARAN K.V.
S/O VELAYUDHEHAN, POORNASREE VEETIL, OLLUKKARA
VILLAGE, MANNUTHI, THRISSUR, PIN - 680655**

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
12.06.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

“C.R.”

K.BABU, J

O.P.(Crl) No.305 of 2024

Dated this the 12th day of June, 2024

JUDGMENT

The challenge in this Original Petition concerns the order dated 10.10.2023 in Crl.M.P.No.871 of 2023, on the file of the Enquiry Commissioner and Special Judge, Thrissur.

2. I have heard the learned Special Government Pleader (Vigilance) Sri. A. Rajesh and the respondent who appeared in person.

3. The facts giving rise to the Original Petition are as follows:-

The respondent joined the Government Service as Deputy Collector in 1987 and superannuated as such on 31.05.2020. Disciplinary proceedings were initiated

against the respondent while he was in service. The Government closed the disciplinary proceedings initiated against him on 18.07.2022. The respondent submitted a representation before the Chief Secretary seeking promotion. He believes that some of the officials in the General Administration Department withheld the representation submitted by him, which resulted in the non-submission of the proposal before the UPSC.

4. The respondent submitted a complaint before the Court of the Enquiry Commissioner and Special Judge, Thrissur. In the complaint, he pleaded the following:

In 1987, the respondent was appointed as Deputy Collector by direct recruitment. On 18.07.2022, the Government closed the disciplinary proceedings initiated against him. He served as Deputy Collector for eight years. He was entitled to get promotion. On 18.07.2022,

he submitted a representation before the Chief Secretary. The then Additional Chief Secretary, Revenue Sri. A Jayathilak I.A.S. forwarded the proposal along with the integrity certificate before the Chief Secretary through the GAD-(AIS)A. The then Chief Secretary, Shri.V.P.Joy failed to submit the proposal before the UPSC Selection Committee. The respondent superannuated on 31.06.2023. The officials of the departments of Revenue and General Administration, namely N. Anjana, Manikandan, Sumod, Rahul and the Joint Secretary to Government (Revenue) Shri. J Biju hatched a criminal conspiracy and withheld the file for one year. The course adopted by the officials violates the law declared by the Apex Court in **Union of India v. Janaki Raman** [(1991) 4 SCC 109]. The respondent approached them and enquired about the delay in processing the file relating to

his promotion. The officials demanded illegal gratification from him.

5. The Special Judge, as per order dated 10.10.2023, directed the SHO, VACB, Thrissur to conduct a quick verification after getting approval under Section 17A of the Prevention of Corruption Act. Paragraphs 1 to 4 of the order reads thus:-

“The complainant filed the petition alleging the commission of offences punishable u/s 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 against five person u/s.200 of Cr.P.C.

2. The case of the petitioner in brief is as follows:-The petitioner, having been selected as Dy. Collector from general merit, selection conducted by PSC in the year 1987, had discharged his job at L.R. Department till 31.05.2020. The petitioner having been completed his service, the department authorities dropped all the departmental action against him as disciplinary proceedings on 18.07.2022. Thereafter, he preferred

application for securing IAS and it was not forwarded by Addl. Chief Secretary Jayathilakan, Chief Secretary V.P.Joy, General Administration Secretary Anjana, Dy. Secretary, Manikandan and Section Officer Sumod, Section Asst. Rahul and Joint Secretary Biju so as to satisfy their demand for illegal gratification to forward his application before UPSC to confer IAS. They held the file without having any reason for one year and he specifically alleged that conspiracy hatched among the accused and thus Biju and others abused their official position for illegal gratification and thus they committed the offence u/s 13(1(e) r/w 13(2) of the Prevention of Corruption Act, 1988 and Sec.120-B of I.P.C. Thereby, he preferred this application for the redressal of the grievances.

3. On advertng the facts stated in the petition, serious allegations were urged against the Chief Secretary and others. His application to confer IAS was inordinately delayed by the accused for one year. It would cause to decline opportunity of the petitioner to

secure a covetable post with administrative power. His loss cannot be estimated by any measures. However, the application would have declined by the appropriate authority, if he was not qualified or not having integrity to be selected. However, obstacles made in sending application in time would hinder the chance of him to get the opportunity at the mercy of some officials yielding their demand shall not be tolerated.

4. The demand of illegal gratification shall not be simply drawn from the circumstances. But inordinate delay in forwarding the application and without having any reason for the same would draw strong presumption that there must be some ill-motive from the part of the official responsible for the delay. Therefore, the allegation of illegal gratification should not be ruled out. Presumption prevails over all justification being proposed from the part of the delinquents. Higher authorities are also responsible for the breach of their subordinates. Therefore, the aforesaid facts would

suffice to prove a prima facie case of misconduct against the accused.” (Sic)

6. It appears from the cause title of the order that the observations were made by the Special Judge against the Additional Chief Secretary, Revenue Sri. A Jayathilak I.A.S.

7. It is pertinent to note that the respondent/complainant has not raised any allegation against Shri. A.Jayathilak I.A.S. The only reference in the complaint is the then Additional Chief Secretary Shri. Jayathilak forwarded the proposal for the promotion of the respondent, along with the integrity certificate, to the Chief Secretary through the GAD Department.

8. The respondent appeared in person before this Court and reiterated that he never raised any allegations against Shri.A. Jayathilak I.A.S.

9. The unwarranted observations happened to be recorded in the impugned order essentially for the following reasons:

(1) The Special Judge erroneously understood the facts

(2) The light and casual approach of the Special Judge in dealing with a complaint alleging corruption against public servants.

10. It appears from the impugned order that the Special Judge proceeded on the assumption that the respondent/complainant raised allegations against Shri. Jayathilak also. It is evident from paragraph 2 of the order, where averments in the complaint are narrated, that the Special Judge did not comprehend the pleadings in the complaint. The Special Judge recorded in paragraph 2 that Shri. Jayathilak did not forward the application that was preferred by the complainant/

respondent. A perusal of the complaint reveals that the respondent/complainant has not levelled such an allegation, whereas he pleaded in the complaint that the then Revenue Secretary Shri. A. Jayathilak forwarded the proposal along with the Integrity Certificate.

11. I make it clear that the complainant has not levelled any allegations against Shri. A. Jayathilak.

12. A Special Judge functioning under the PC Act must be conscious of his responsibilities and obligations. Even an unnecessary preliminary enquiry may cause a blemish in the career of a public servant. Unfortunately, in the present case, the Special Judge was not conscious of his duties and obligations.

13. At the risk of repetition, I assert that the observations in the impugned order, which appeared to have been made against Shri.A. Jayathilak I.A.S., an officer of the Indian Administrative Service who

maintained impeccable integrity throughout his career, were unwarranted and unfortunate. I must say that the casual approach of the Special Judge in dealing with the complaint resulted in embarrassment to Shri. A. Jayathilak I.A.S. It is the responsibility of this Court to see that a patently erroneous order/observation of the Special Judge shall not cause any blemish in the career of an extremely honest civil servant. I am of the considered view that the observations in the impugned order are liable to be obliterated completely.

14. This takes me to the merits of the case. It is the case of the respondent that when the Government closed the disciplinary proceedings against him, he was entitled to the due promotion. His further case is that though he submitted the application seeking promotion, the relevant file remained withheld for two years. He alleges that the then Chief Secretary Shri. V.P.Joy and some of the officials

in the General Administration Department are responsible for withholding the file. He has raised a wild allegation that some of the officials in the General Administration Department demanded illegal gratification from him.

15. The learned Special Government Pleader, on instructions, submitted that the respondent/complainant was included in the zone of consideration for promotion to IAS for several years right from 1998, but the various selection committees did not recommend promoting him into the Indian Administrative Service citing pendency of disciplinary proceedings and imposition of penalties against him. The learned Special Government Pleader also submitted that the respondent was last considered for promotion during the selection committee meeting held on 16.09.2020 to prepare the select list for the year 2018. The learned Special Government Pleader further

submitted that the Selection Committee found his integrity doubtful, as he was under suspension during that period. The learned Special Government Pleader submitted that after the closure of the disciplinary proceedings against the respondent, the Government examined his request. It is further submitted that the promotion proposals furnished by the State Government are usually subjected to intense scrutiny by the UPSC. As the UPSC accepts only those proposals that are complete in all respects, the Revenue Department was requested to furnish a complete proposal for the respondent as per the Commission's check list. The learned Special Government Pleader submitted that the proposal submitted by the respondent is under the examination of the Government.

16. On the allegations raised by the respondent regarding the demand of illegal gratification, the learned Special Government Pleader, on instructions, submitted

that the respondent has the habit of filing frivolous litigation against Government officials. It is also submitted that the respondent has faced a series of disciplinary proceedings and most of the disciplinary proceedings ended up in giving punishments while some cases were dropped by the Government by taking a lenient view. The learned Special Government Pleader submitted a brief history of the various proceedings initiated against the respondent, which is narrated below:-

- a. Three annual increments of the respondent were barred with cumulative effect in August 2001 against the disciplinary action regarding irregularities in granting a gun license and explosive licenses.
- b. Two annual increments of the respondent were barred without cumulative effect in December 2007 on the allegation regarding misappropriation of money he collected as fine from vehicles which were transporting sand/ soil without permit.

c. Disciplinary action was initiated against him for illegally taking away four files dealing with the unauthorized cutting of sandalwood trees in Marayoor, Kanthalloor and Keezhanthoor villages from Taluk Office, Devikulam, in the absence of Tahsildar, without giving a formal letter. He kept the files in personal custody even after his transfer from the post of RDO, Devikulam. Two annual increments were barred without cumulative effect in this matter. But later, considering the review petition filed by him, the punishment was modified to a 'severe warning' in June 2009 .

d. In July 2009, three increments were barred with a cumulative effect on the allegation regarding disposing of a complaint against him by himself without showing the file to the District Collector.

e. The respondent was suspended from service while holding the post of Deputy Collector (LA), Palakkad, on the basis of various instances of insubordination and dereliction of duty. He was later reinstated in service and the disciplinary action was finalised in February, 2009 by giving a warning.

f. Two annual increments were barred without cumulative effect in July 2013 on the allegation

regarding land acquisition matters while holding the post of Deputy Collector (LA), NHDP, Thrissur.

g. While holding the post of Deputy Collector (Land Revenue), Thrissur he deputed his Office Attendant on behalf of him for Malayalam Day Celebration function organised by District Administration. Disciplinary action initiated in this matter was finalised in December, 2014 by awarding a stringent warning.

h. He was suspended from service in September, 2019 on the allegation that he delayed in passing bills related to video coverage of the Lok Sabha Election 2019 by raising unnecessary queries and demanding money for passing the bills. The suspension continued until his retirement in May 2020, and disciplinary proceedings in the matter were finally dropped in May 2022.

i. Disciplinary action was initiated against him for sending representation directly to the Hon'ble President of India instead of sending the representation through the proper channel. Disciplinary action initiated in this regard was finalised in December 2019 by awarding censure.

j. Disciplinary action was initiated against him for raising baseless allegations and continuously submitting false complaints against the Chief Secretary, other Deputy Collectors and superior officers and also for filing criminal cases against other officers without obtaining permission. This disciplinary action was dropped in December 2021 by taking a lenient view with the observation that he might be under the impression that he is intentionally being restrained from being promoted to IAS.

k. Disciplinary action was initiated against him for the allegation that he submitted a forged salary certificate to Ollookkara Service Co-operative Bank, Thrissur, while holding the post of Deputy Collector, Palakkad, for obtaining a loan by putting the fake signature of another Deputy Collector and incorrectly writing his retirement date as 10.05.2023 instead of 31.05.2020. The bank authorities reported the matter to the District Collector. The loan was not sanctioned since the certificate was found to be fake. The original of the certificate submitted before the Bank was destroyed by the Bank. The Enquiry Officer recommended a Police investigation against the respondent in the matter. But the Government, by

taking a humanitarian view in the matter on account of his retirement and also non-disbursement of his pensionary benefits, decided to drop further action in the matter in July 2022.

17. The proceedings referred to above indicate that the disciplinary actions initiated against him must have hampered his promotion prospects. The allegation levelled by the respondent/complainant that some of the officials of the General Administration Department demanded bribe from him is no way believable. He failed to establish a *prima facie* case to seek preliminary enquiry against the officials mentioned above.

18. The complaint filed by the respondent/complainant does not disclose any offence requiring verification. In ***Manoj Abraham, IPS v. P.P. Chandrasekharan Nair*** [2017 (3) KHC 983], this Court held that a complaint must disclose an offence, and the

term 'disclose' does not simply mean that the complainant alleges or reveals an offence. The Court held that simply on a complaint which is not supported by any valid, credible material, an investigation could not be ordered by the Special Courts.

19. The impugned order is perverse, untenable in law, and, grossly erroneous and glaringly unreasonable. This is a case of abuse of legal process. The impugned order cannot be allowed to stand. All observations in the impugned order stand quashed. The order dated 10.10.2023 in Crl.M.P.No,871 of 2023 passed by the Enquiry Commissioner and Special Judge, Thrissur is set aside.

The Original Petition is allowed as above.

Sd/-
K.BABU JUDGE

kkj

APPENDIX OF OP(CRL.) 305/2024

PETITIONER EXHIBITS

- Exhibit P1** COPY OF THE CRL,MP NO. 871/2023 DATED
02.08.2023
- Exhibit P 2** COPY OF THE ORDER OF THE COURT OF THE
ENQUIRY COMMISSIONER AND SPECIAL
JUDGE, THRISSUR DATED 10.10.2023
- Exhibit P 3** COPY OF THE LETTER DATED 19.10.2023
BEARING NO. B1/CRL.MP NO. 871/2023/ECR