

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K. BABU

TUESDAY, THE 14TH DAY OF NOVEMBER 2023 / 23RD KARTHIKA, 1945

WP(C) NO. 20903 OF 2020

PETITIONER:

S. JAYAN



BY ADVS.
SURESH BABU THOMAS
NANDAGOPAL S.KURUP

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE ADDITIONAL SECRETARY TO
GOVERNMENT, VIGILANCE (B) DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 2 DIRECTOR,
VIGILANCE AND ANTI-CORRUPTION BUREAU, VIKAS BHAVAN
P.O., THIRUVANANTHAPURAM-695033.
- 3 DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI-CORRUPTION BUREAU, SPECIAL
INVESTIGATION UNIT-1, POOJAPPURA,
THIRUVANANTHAPURAM-695012.
- 4 UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF
INDIA, DEPARTMENT OF PERSONNEL AND TRAINING (DOPT),
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND
PENSIONS, NORTH BLOCK, NEW DELHI-110001.
- 5 DIRECTOR,
CENTRAL BUREAU OF INVESTIGATION,
CGO COMPLEX, LODHI ROAD, NEW DELHI-110003.
- 6 SUPERINTENDENT OF POLICE,
CENTRAL BUREAU OF INVESTIGATION, KATHRIKADAVU,
KALOOR- 682017.

BY ADVS.
SRI.P.NARAYANAN, SENIOR GOVT. PLEADER
SMT.O.M.SHALINA, CGC
S.MANU
Sreelal Warriar-Spl.Public Prosecutor-CBI
SRI.P.VIJAYAKUMAR -ASST.SOLICITOR GENERAL
SRI.RAJESH.A-SPL.GOVERNMENT PLEADER (VIGILANCE)
SMT.REKHA-PUBLIC PROSECUTOR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 14.11.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

CR**K.BABU, J**

W.P(C) No.20903 of 2020

Dated this the 14th day of November, 2023**J U D G M E N T**

The petitioner, a former employee of the Travancore Titanium Products Limited, Thiruvananthapuram (hereinafter referred to as the Titanium Company), seeks transfer of investigation in VC 01-2015/SIU-1 of VACB (Special Investigation Unit-I), Thiruvananthapuram to the Central Bureau of Investigation.

2. The Titanium Company is a Public Sector Undertaking owned by the Government of Kerala. The Company is engaged in the manufacture of Titanium Dioxide Pigment. The manufacturing process generates large quantities of liquid effluent containing ferrous sulphate and sulfuric acid. This effluent was being discharged to the Arabian Sea. The Titanium Company was required to initiate steps to mitigate the pollution in view of the mandatory provisions in the Water (Prevention and Control of Pollution) Act, 1974. In the year 1976, the Titanium

Company entrusted M/s.National Institute of Oceanography (NIO), Goa to carry out a detailed survey of the extent of sea pollution and suggest methods for disposal of the acid effluent. NIO suggested disposal of the diluted effluent through a submarine pipeline. But this was objected to by the local fishermen folk.

3. The Titanium Company engaged FACT Engineering and Design Organization (FEDO), an engineering consultancy division of the Fertilizers and Chemicals Travancore Limited (FACT), as a consultant to recommend the measures for abatement of pollution. FEDO recommended setting up a Neutralization Plant at an estimated cost of Rs.10 crores. The detailed project report submitted by the FEDO for the Integrated Effluent Treatment Project was approved by the Government on 20.01.2001 at an estimated cost of Rs.108 crores. Though a tender was floated to implement the project, the same was later abandoned.

4. In 2003-2004, the Titanium Company engaged M/s.Metallurgical & Engineering Consultants (India) Limited (MECON), Ranchi, Uttaranchal as Project Management Consultant to address the pollution problems. MECON, a Public Sector Enterprise under the Ministry of Steel, Government of India, was entrusted with the responsibility of

preparation of a Basic Project Implementation Document (BPID), preparation of Environmental Impact Assessment (EIA) and Environmental Management Plan (EMP) and also to carry out engineering project management and implementation. The project had to be completed within 26 months. The agreed fee for BPID was Rs.3.6 crores. The project mooted by MECON was planned in two phases. The first phase envisaged the installation of pollution control plants like Acid Recovery Plant (ARP), Copperas Recovery Plant (CRP) and Neutralization Plant (NP) to marginally augment the production capacity. The project's second phase envisaged substantial increase in the production capacity and pollution control plants' capacity to meet the increased production capacity.

5. The estimated cost of the project proposed by MECON was Rs.129 crores for the first phase and Rs.126 crores for the second phase. The project cost was more than twice the value of the total assets of the Titanium Company. The project, as per BPID was approved by the Government as per G.O.(Ms) No.51/05/ID dated 19.05.2005. The project resulted in a heavy loss to the Titanium Company.

6. The petitioner pleaded the following:

6.1. MECON was given the complete authority to enter into contract with Indian/foreign firms on behalf of the Titanium Company as per a letter of authority issued by the Titanium Company on 4.1.2006. MECON invited global tender on behalf of Titanium Company. M/s.Chematur Eco Planning, Finland, in association with AVI Europe Ltd. UK was one of the bidders, and MECON entered into an agreement with them on 10.02.2006 for the Acid Recovery Plant (ARP), Copperas Recovery Plant (CRP) and to supply basic engineering and equipment for the project. The contract price was approximately Rs.72 crores (1,28,17,875 Euros), excluding taxes and duties, of which 1,08,34,938 Euros had already been paid. On 25.04.2006, MECON entered into another agreement with an Indian company, namely V.A.Tech Wagbag, for setting up a Neutralization Plant (NP) at a cost of Rs.32.08 crores.

6.2. M/s.Chematur Eco Planning supplied equipment in 2007, and the Titanium Company paid Rs.62 crores. The imported equipments are kept idle as the project is not viable. The Titanium Company incurred Rs.17.33 Crores towards import duty and other expenses. In addition, a sum of Rs.15 Crores was spent to set up the Neutralization Plant. The project consultancy fee and other project expenses were about Rs.10

crores. More than Rs.120 Crores had already been spent by the Titanium Company for the pollution control projects proposed by MECON. But the plants could not be commissioned. In the meantime, MECON intimated to the Titanium Company in June 2007 that the project's total cost for Phase I and II escalated to Rs.414 Crores (Rs.225.8 Crores for Phase I and Rs.188.6 for Phase II). The additional amount required to complete the pollution control project, which was part of Phase I, was about Rs.160 Crores. The Titanium Company was unable to incur such a huge additional financial burden.

6.3. The Government of Kerala, as per G.O.(Ms)No.55/2008/ID dated 25.04.2008 and G.O.(Ms)No.62/2008/ID dated 14.05.2008 constituted an Expert Committee consisting of eminent experts from various fields to study the feasibility of the pollution abatement cum diversification/expansion project of the Titanium Company and to suggest an alternate strategy to be followed. The Expert Committee submitted its report to the Government, concluding that the pollution abatement project was financially not viable. The Government accepted the report and issued G.O.(Ms)No.67/2011/ID dated 01.03.2011. The Titanium Company was permitted to implement pollution control

measures at an estimated cost of Rs.83.08 crores.

6.4. The project conceived and implemented through MECON caused a loss of Rs.120 crores to the Titanium Company without any corresponding benefit. The selection of MECON as a Project Management Consultant, the implementation of its recommendation without proper assessment of financial viability and technical feasibility and the placement of orders through MECON were part of a criminal conspiracy hatched at the highest level of administration in the State Government as well as by the officials of the Titanium Company and MECON. The project facilitated undue pecuniary advantage to the foreign Company and others involved in the decision making process at various levels. The Comptroller and Auditor General of India had also made adverse observations regarding the project in its report for the year ended on 31.03.2017.

6.5. One Sri.Sebastian George submitted a petition before the Government alleging illegalities and large scale corruption in implementing the pollution abatement project at the Titanium Company. The complaint was forwarded to the Director of Vigilance. While so, Sri. G.Sunil filed Crl.M.P.No.845/2006 before the Court of Enquiry

Commissioner and Special Judge, Thiruvananthapuram, alleging criminal misconduct on the part of officials of the Titanium Company. The learned Special Judge on 08.11.2006, ordered preliminary enquiry into the allegations, clubbing it with the enquiry already ordered by the Government in the complaint submitted by Sri. Sebastian George.

6.6. The petitioner filed Crl.M.P.No.802/2011 before the Court of Enquiry Commissioner and Special Judge, Thiruvananthapuram, alleging offences punishable under Sections 7, 8 and 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 120B r/w Section 34 of the Indian Penal Code against a former Chief Minister of Kerala and ten others. By order dated 06.09.2011, the Special Judge disposed of the complaint, observing that the petitioner can approach the Enquiry Officer and furnish all the evidence available to him. The petitioner filed Crl.M.P. No.57/2012 and prayed to supervise the enquiry by the Special Judge. The Enquiry Officer submitted a report before the Court of Special Judge in March 2013, concluding that no wrongful gain was obtained by the respondents in the complaint and that they caused no wrongful loss to the Titanium Company. The Special Judge, after considering the report and the objections filed by the petitioner and Sri. Sebastian George

declined to accept the enquiry report and directed to register FIR and conduct investigation.

6.7. The Deputy Superintendent of Police, VACB Special Unit 1, Thiruvananthapuram, registered FIR as VC 01/15/SIU-1 on 20.01.2015, alleging offences punishable under Sections 10, 11 and 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 120B read with Section 34 of the Indian Penal Code.

6.8. The total reserve and surplus share capital of the Titanium Company as on 31.03.2005 was only Rs.59.9 crores. The Titanium Company and the Government accepted the project involving expenditure of more than Rs.256 Crores in May 2005, as a result of the conspiracy hatched among the respondents in the complaint preferred by the petitioner with intent to make a pecuniary advantage for themselves. In furtherance of their common intention, they conspired together and indulged in corrupt and illegal acts, abused their official positions to devise plans to award the project to a foreign company and in that process, they obtained pecuniary advantage and caused a huge loss to the Titanium Company. The economically unviable and technically flawed project of MECON was accepted without any ground study. The

estimated cost was misleading. The detailed evaluation of the project revealed that the actual cost was Rs.414 crores instead of the estimated cost of Rs.256.4 crores. Respondent No.7 in Ext.P1 complaint Sri.Rajeevan had acted as an agent of the Finland Company, which supplied the equipment, and was the middleman in this deal. He was a relative of respondent No.9 in Ext.P1 complaint. He played a key role at every stage of the project right from the very beginning as a facilitator. The fund transfer to the foreign supplier is a matter which requires thorough investigation with the assistance of foreign Banks to ascertain to whom the money was transferred. The suspicious involvement by the officials of MECON, a Central Government Public Sector undertaking, needs to be probed.

6.9. The scam has inter-state and international dimensions. Considering that one of the delinquent parties in the deal is a Central Government Public Sector Undertaking, the State Government decided to entrust the investigation of the case with Central Bureau of Investigation (CBI).

6.10. The entire records of the vigilance case were handed over by respondent No.3 to the Central Bureau of Investigation. The Central

Government has so far not issued a formal order entrusting the investigation with the CBI, and the CBI has not taken over the investigation.

7. The State of Kerala, the Director of VACB and the Deputy Superintendent of Police, VACB, Thiruvananthapuram, (respondent Nos.1 to 3) pleaded as follows:

7.1. Sri.Eapen Joseph (A2), the Managing Director of the Titanium Company by abusing his official position entered into a criminal conspiracy with Shri.Santhosh Kumar (A3) and Shri.A.M.Bhaskaran (A4), committed criminal misconduct by appointing M/s.MECON, Ranchi, Uttaranchal, as the Company's consultant for Pollution Abatement cum Capacity Expansion Project under the instigation of one Rajeevan, an agent of M/s. Chematur Eco Planning, a Finland- based Company and, paid Rs.9 crores as consultancy charges to MECON instead of an agreed amount of Rs.3.5 crores. MECON placed work orders for the company to M/s.Chematur Eco Planning for Rs.258 crores without inviting global tender, violating the directions of the Supreme Court Monitoring Committee, without getting sanction from Central Ministry of Environment and Forest and in violation of

Hazardous Waste Rules 1989 and also paid Rs.20 crores to M/s.Chematur Eco Planning as advance without obtaining performance bank guarantee. There were various allegations against Shri.Eapen Joseph, former Managing Director, Sri.Santhoshkumar, Chief Manager (Marketing), Late Sri.A.M.Bhaskaran Executive Director, Shri.Thomas Mathew, formerly Chief Commercial Manager and Shri.B.Gopakumaran Nair, Chief Commercial Manager of the Titanium Company, in connection with various issues. They obtained undue pecuniary advantage by abusing their official position.

7.2. During the preliminary enquiry, statements of 56 witnesses were taken and 104 records were collected and analyzed and the statements of 11 suspected officers were recorded. After that, during the investigation, 87 witnesses, including those who raised various allegations, were examined. 72 documents were seized as part of the investigation. A special team was constituted vide order No.CVC.01/15/SIU-1/TTPL) 288/15 dated 15.06.2017, headed by the Superintendent of Police, Vigilance & Anti- Corruption Bureau. A technical team constituted to assist in the investigation visited the site and prepared and submitted a technical report on 22.07.2016 and

23.07.2016. During the investigation, efforts were made to collect details regarding the supply of equipment for Acid and Copperas Recovery Plants from foreign companies with the assistance of Interpol.

7.3. However, the investigation outcome with Interpol's aid was Nil. The supply aspect of equipment from foreign companies like AVI Europe, VA Tech Wabag could not be verified, which posed a major hurdle in the investigation. The machinery imported from foreign companies was kept in idle, which resulted in a huge loss to the State exchequer. The investigation revealed the transactions made by MECON, under the instigation of one Rajeevan, an agent of M/s.Chematur Eco-Planning, a Finland-based company and the involvement of another foreign company namely AVI Europe, UK for the purchase of equipment. Hence, the technical feasibility of the project is to be ascertained from the technology available in the foreign countries and the feasibility of Zero pollution as envisaged in the proposed project report of MECON. The records related to this case are voluminous and require extensive scrutiny in addition to the complex financial transactions and technical evaluations. One of the delinquent parties in this deal is MECON, a Central Government Public Sector Undertaking. The transactions have

taken place between MECON and foreign companies. The actual price of the equipment imported has to be ascertained from Finland and the United Kingdom. The transactions have interstate and international dimensions. As the case has interstate and international dimensions, the Government of Kerala decided to entrust the investigation to the CBI as per G.O.(MS) No.19/2019/Vig. dated 07.09.2019 with a direction to handover the proposal of CBI investigation to the Personnel Department, Government of India.

8. The CBI pleaded as follows:

After examining letter No.Vig-B1/2/2019-Vig dated 26.11.2019 submitted by the Government of Kerala, the Department of Personnel and Training had informed the Government of Kerala that it is not feasible to handover the case to CBI for investigation. During the investigation by the State Vigilance, the crucial and relevant documents could not be collected and many crucial witnesses/suspects could not be traced. Therefore, at this belated stage, a CBI investigation may not get any desired result. As the CBI, ACB, Cochin is investigating the Popular Finance Group Fund Scam, substantial resources and logistics of the Branch have been deployed.

9. SUBMISSIONS

The learned counsel for the petitioner Sri.Suresh Babu Thomas submitted that the case involves national and international ramifications, and the State Vigilance was unable to unearth the facts and to complete the investigation.

10. The learned Senior Government Pleader Sri.P.Narayanan submitted that as the case has interstate connections and international ramifications, the Government of Kerala, after considering all the aspects, decided to handover the investigation to CBI. The learned Senior Government Pleader further submitted that considering the interstate and international dimensions of the case, the involvement of a Central Public Sector undertaking and the limited resources at the disposal of the state investigating agency for the investigation of a case of such a magnitude, the investigation by the CBI is highly necessary.

11. The learned Deputy Solicitor General Sri.S.Manu submitted that the CBI, ACB, Cochin unit is overburdened with the investigation in many other cases. At this belated stage, the CBI investigation may not get any desired result.

12. CONSIDERATION

The Titanium Company suffered a huge loss to the tune of Rs.120 Crores in the alleged transactions. The Company gained nothing. The financial position of the Company has been ruined. When the total reserve and surplus share capital of the Titanium Company as on 31.3.2005 was only Rs.59.9 Crores, an extremely large project involving expenditure of more than Rs.256 Crores was accepted by the Titanium Company and the Government. It is alleged that a conspiracy was hatched among the officials concerned and the persons in authority. It appears that the selection of MECON as a project management consultant was without proper assessment of financial viability and technical feasibility.

13. The investigation so far conducted by the VACB revealed that the Managing Director of the Titanium Company abused his official position and entered into a criminal conspiracy with Sri.Santhosh Kumar (A3) and Sri.A.M.Bhaskaran (A4) and committed criminal misconduct by appointing MECON as the consultant of the Company for a pollution abatement cum capacity expansion project. The investigation further revealed that one Rajeevan, an agent of M/s.Chematur Eco-planning, a

Finland-based Company was part of the conspiracy. A sum of Rs.9 Crores as consulting charges to MECON was given against the agreed amount of Rs.3.5 Crores. The investigation further revealed that MECON placed orders for Rs.256 Crores without inviting global tender and without obtaining sanction from the Central Ministry of Environment and Forest and also paid Rs.20 Crores to the Finland-based Company as advance without obtaining performance bank guarantee. Sri.Eapen Joseph, the former Managing Director, Sri.Santhosh Kumar, Sri.A.M.Bhaskaran, Sri.Thomas Mathew, Sri.B.Gopakumaran Nair and many other higher officials of the company are involved in the conspiracy. The VACB has concluded that accused Nos.2 to 5 in the FIR obtained undue pecuniary advantage for themselves and others.

14. As part of the investigation, the VACB attempted to collect the details regarding the supply of equipment for acid and copperas recovery plants from foreign companies with the assistance of Interpol. However, there was no progress in the attempt of the VACB. It has come out that since the supply aspects of equipments from foreign companies could not be verified, the VACB found it difficult to proceed with the investigation. The transactions made by MECON with the

Finland-based Company and the UK-based Company are to be investigated in detail for which the VACB has no resources. The materials would reveal that the foreign countries' assistance and co-operation for assessing the project's technical feasibility is essential for further investigation.

15. After considering all these aspects, the State Government consented to the Delhi Special Police establishment to exercise the powers and jurisdiction in the whole State of Kerala to investigate the offences involved in the FIR. The notification reads thus:

“GOVERNMENT OF KERALA

Vigilance (B) Department

NOTIFICATION

GO(Ms).No. 19/2019/Vig

07 September, 2019

SRO No.634/2019

Thiruvananthapuram

In exercise of the powers conferred under section 6 of the Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946) the Government of Kerala hereby accord consent to the members of the Delhi Special Police Establishment to exercise powers and jurisdiction in the whole of the State of Kerala to investigate the offences involved in V.C 1/2015/SIU-1 registered at Vigilance and Anti Corruption Bureau, Special Investigation Unit-1, Thiruvananthapuram and matters related thereto.

By order of the Governor,

Dr. VISHWAS MEHTA

Additional Chief Secretary to Government

Explanatory Note

[This does not form part of the notification, but is intended to indicate its general purport.]

The Deputy Superintendent of Police, Vigilance and Anti Corruption Bureau, Special Investigation Unit-1, Thiruvananthapuram had registered a Vigilance case in V.C 1/2015/SIU-1 in respect of the offences punishable under sections 7,10,11 and clause (d) of Sub-Section (1) of Section 13 of the Prevention of Corruption Act, 1988 and section 120B and 34 of Indian Penal Code 1860 (Central Act 45 of 1860) against the officials of Travancore Titanium Product Limited, Thiruvananthapuram, a Public Sector Undertaking owned by the Government of Kerala.

The records relating to the case are voluminous and require extensive scrutiny in addition to the complex financial transactions and technical evaluations. The transaction has been taken place between MECON, a Central Government Public Sector Undertaking and foreign companies. Since the case is having Interstate and International dimensions, Government have decided to entrust the investigation of V.C-1/2015/SIU-1 of Vigilance and Anti Corruption Bureau, Special Investigation Unit-1, Thiruvananthapuram with the members of the Delhi Police Establishment. For the above purpose, the consent of the State Government under Section 6 of the Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946) is necessary. Government have, therefore, decided to accord consent.

The notification is intended to achieve the above object.”

16. The Government has considered the interstate and international dimensions of the matter and decided to entrust the investigation to the CBI.

17. Legal Position

It is trite that a citizen, who is a defacto complainant in a criminal case alleging commission of cognizable offence affecting violation of his legal or fundamental rights against the high Government officials or influential persons, prays for a direction for investigation of the alleged offence by the CBI, such prayer cannot be granted as a matter of routine or merely because the parties have levelled some allegations against the local police. In **Secretary, Minor Irrigation & Rural Engineering Services, U.P and others v. Sahngoo Ram Arya & another** ((2002) 5 SCC 521), the Supreme Court observed that an order directing an enquiry by the CBI should be passed only when the High Court, after considering the material on record, comes to the conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency.

18. A Constitution Bench of the Supreme Court in **State of West Bengal and others v. Committee for Protection of Democratic Rights, West Bengal and others** [(2010) 3 SCC 571], pointing out the situations where the prayer for investigation by the CBI is to be allowed, observed thus:

“70... Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”

19. In **K.V.Rajendran v. Superintendent of Police, CBCID South Zone, Chennai and others** [(2013) 12 SCC 480], the Supreme Court held thus:

“13.This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies....”

17.the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is

against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased."

20. In **Romila Thapar and others v. Union of India and others** [(2018) 10 SCC 753], a three-Judge Bench of the Supreme Court relying on the precedents held that the accused cannot ask for changing the investigating agency or to do investigation in a particular manner including for court-monitored investigation. In **Central Bureau of Investigation & another v. Rajesh Gandhi and another** [(1996) 11 SCC 253] the Supreme Court held that no one can insist that an offence be investigated by a particular agency and an aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.

21. In **Himanshu Kumar and Others v. State of Chhattisgarh and Others** [(2022 (5) KLT Online 1093 (SC): 2022(10) SCALE)], the Apex Court reiterating the precedents on the subject observed that even after filing of the chargesheet, the court is empowered in an appropriate case to handover the investigation to an independent agency like the CBI.

The Supreme Court further observed that in an appropriate case, when the Court feels that the investigation by the police authorities is not in a proper direction, and to do complete justice in the case and if high officials are involved in the alleged crime, the Court may be justified in such circumstances to handover investigation to an independent agency like the CBI. In **Himanshu Kumar** (supra) the Supreme Court further observed that the contextual facts and the attendant circumstances have to be singularly evaluated and analyzed to decide the needfulness of further investigation or re-investigation to unravel the truth and mete out justice to the parties. The prime concern and the endeavour of the Court of law should be to secure justice based on true facts, which ought to be unearthed through a committed, resolved and a competent investigating agency.

22. In **Subrata Chatteraj v. Union of India and others** [(2014) 8 SCC 768] while dealing with a major financial scam named Chit Fund Scam affecting lakhs of depositors across several States in the eastern parts of the country, after taking into account the fact that (a) the investigation conducted till the time of consideration of the Writ Petition suggested that the collection of money from the depositors was neither

legally permissible nor were such collection/deposits invested in any meaningful business activity that could generate the high returns promised to the depositors, (b) more than Rs.25 lakhs claims had been received by the Commissions of Enquiries set up in the State of Odisha and West Bengal, which was indicative of the magnitude of the scam in terms of the number of citizens defrauded, (c) the companies which indulged in the scam had their tentacles in different States, giving the scam inter-state ramifications, (d) the investigation revealed the involvement of several political and other influential personalities, and (e) the role of regulators like SEBI, authorities under the Companies Act and the Reserve Bank of India was also under investigation by the State Police Agency, the Supreme Court held that the features narrated above called for the transfer of the ongoing investigation from the State Police to the CBI. In **Subrata Chatteraj** (supra) the Supreme Court held thus:

“36. The question is whether the above features call for transfer of the ongoing investigation from the State Police to CBI. Our answer is in the affirmative. Each one of the aspects set out above in our view calls for investigation by an independent agency like the Central Bureau of Investigation (CBI). That is because apart from the sensitivity of the issues involved, especially inter-state ramifications of the scam under investigation, transfer of cases from the State Police have been ordered by this Court also with a view to ensure credibility of such investigation in the public perception. Transfers have been ordered by this Court even in cases where the family members

of victim killed in a firing incident had expressed apprehensions about the fairness of the investigation and prayed for entrusting the matter to a credible and effective agency like CBI.

37. Investigation by the State Police in a scam that involves thousands of crores collected from the public allegedly because of the patronage of people occupying high positions in the system will hardly carry conviction especially when even the regulators who were expected to prevent or check such a scam appear to have turned a blind eye to what was going on. The State Police Agency has done well in making seizures, in registering cases, in completing investigation in most of the cases and filing charge-sheets and bringing those who are responsible to book. The question, however, is not whether the State police has faltered. The question is whether what is done by the State Police is sufficient to inspire confidence of those who are aggrieved.”

23. The principle that emerges from the precedents referred to above is that the power to transfer an investigation must be used sparingly and only in exceptional circumstances.

24. On the touchstone of the principles discussed above, I now proceed to consider whether the facts of the present case have prima facie established that it is a fit case for allowing the transfer of investigation from the State agency to the CBI.

25. The investigation so far conducted by the State agency revealed the following: (i) The higher officials of the Titanium Company hatched a criminal conspiracy. (ii) At the instigation of one Rajeevan, an agent of Finland-based Company, a sum of Rs.9 Crores was paid as

consultancy charges to MECON against the agreed amount of Rs.3.5 Crores. (iii) MECON placed work orders for the Finland Company for Rs.258 Crores without inviting global tenders or getting sanction from the Ministry of Environment and Forest. (iv) Rs.20 Crores was paid to the Finland-based Company as advance without obtaining a performance bank guarantee. (v) The investigating agency could not verify the supply aspect of the machinery imported from foreign countries like AVI Europe, V.A.Tech Wagbag. (vi) The investigating agency could not obtain the details of transactions between MECON and two foreign companies. (vii) They could not assess the project's technical feasibility based on the technology available in the foreign countries.

26. The transactions have occurred between MECON, a Public Sector undertaking and foreign companies. The State Investigating Agency could not even assess the actual price of the equipment imported from Finland and UK-based companies. The materials revealed that the transactions involved have interstate and international dimensions.

27. I am of the considered view that the continuation of the investigation by the State agency cannot unearth the truth and inspire the confidence of those who are aggrieved.

28. The right to life guaranteed under Article 21 of the Constitution of India guarantees the right to speedy justice, which implies not only the right to a speedy trial but the right to speedy investigation in criminal cases as well. The investigation by the ordinary State Investigating Agency may often be quick but not well equipped to handle the interstate and international dimensions involved in the case. The investigation of the case as of now is at a standstill, mainly due to the interstate and international ramifications of the transactions involved. This is an exceptional situation where providing credibility and confidence in investigations becomes necessary.

29. The submission of the CBI that they are engaged in the investigation of the Popular Finance Fund scam and substantial resources and logistics of CBI Branch have been deployed for the same cannot be accepted as the citizens are entitled to not only expect but demand that the investigation ought to be effective and speedy. It is no answer to say that the agency hands are full of or that it does not have the manpower to handle the cases. No matter circumstances justify or demand the investigation by a centrally controlled agency.

30. Resultantly, respondent No.4 is directed to issue orders

entrusting the investigation in VC 01-2015/SIU-1 of VACB (Special Investigation Unit-I), Thiruvananthapuram with the CBI. Respondent Nos.5 and 6 are directed to take over the investigation in VC 01-2015/SIU-1 of VACB (Special Investigation Unit-I), Thiruvananthapuram. The CBI shall complete the investigation within six months from this date. The investigating agency is at liberty to approach this Court seeking extension of time, if found necessary.

The Writ Petition is allowed as above.

Sd/-

K.BABU
JUDGE

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APPENDIX

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE COMPLAINT IN C.M.P.NO.802/2011 OF THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE(VIGILANCE), THIRUVANANTHAPURAM (WITHOUT ANNEXURES).
- EXHIBIT P2 TRUE COPY OF THE ORDER DATED 06.09.2011 IN CRL.M.P.NO.802/2011 OF THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM.
- EXHIBIT P3 TRUE COPY OF THE COMMON ORDER DATED 28.08.2014 IN CRL.M.P.NO.845/2006 AND CONNECTED CASES OF THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM.
- EXHIBIT P4 TRUE COPY OF THE ORDER DATED 19.12.2014 OF THIS COURT IN CRL.R.P.NO.1568/2014.
- EXHIBIT P5 TRUE COPY OF THE FIRST INFORMATION REPORT IN VC 01/15/SIU-1 FILED BEFORE THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE (VIGILANCE), THIRUVANANTHAPURAM.
- EXHIBIT P6 TRUE COPY OF THE LETTER DATED 28.09.2019 ISSUED BY THE GOVERNMENT TO THE PETITIONER.

RESPONDENT EXHIBITS:

- EXT.R3(A) : COPY OF THE ORDER IN C.M.P NO.845/2006 DATED 8.11.2006
- EXT.R3(B) : COPY OF G.O(MS) NO.19/2019/VIG.DTD.7.9.2019
- EXT.R3(C) : COPY OF THE LETTER DATED 16.9.2020
- EXT.R3(D) : COPY OF THE RELEVANT PAGES OF THE REPORT
- EXT.R3(E) : COPY OF THE LETTER DATED 19.11.2019

Annexure R5(a) Copy of DOPT letter No. 228/35/2019-AVD-II dt. 16.09.2020 addressed to Chief Secretary, Government of Kerala