



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

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THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

FRIDAY, THE 11TH DAY OF APRIL 2025 / 21ST CHAITHRA, 1947

OP (KAT) NO. 35 OF 2025

AGAINST THE ORDER DATED 21.01.2025 IN OA NO.828 OF 2024
OF KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONER/4TH RESPONDENT IN O.A.:

ANOOP VARKEY, S/O. E.V. VARKEY,
AGED 49 YEARS
REGIONAL TRANSPORT OFFICER, REGIONAL TRANSPORT
OFFICE, ENFORCEMENT WAYANAD (NOW WORKING AS AND
CORRECT ADDRESS AS ANOOP VARKEY, DEPUTY TRANSPORT
COMMISSIONER, CENTRAL ZONE II, HARF, PLOT NO. 191
A, MAVELIPURAM, KAKKANAD, ERNAKULAM-682030

BY ADVS.
M.U.VIJAYALAKSHMI
BRIJESH MOHAN
K.JAJU BABU (SR.)

RESPONDENTS/APPLICANT AND RESPONDENTS 1 TO 3 AND 5 IN O.A.:

1 G.S. SAJIPRASAD,
AGED 51 YEARS, S/O. (LATE) GOPINATHAN PILLAI, DEPUTY
TRANSPORT COMMISSIONER, OFFICE OF THE DEPUTY
TRANSPORT COMMISSIONER, CENTRAL ZONE-2, HARF, PLOT
NO.191 A MAVELIPURAM, KAKKANAD, ERNAKULAM - 682030



(NOW WORKING AS REGIONAL TRANSPORT OFFICER, CIVIL STATION, VIDYA NAGAR, KASARGOD - 691121) RESIDING AT 'CHAITANYA', KURATTICKADU, MANNAR.P.O, CHENGANOOR TALUK, ALAPPUZHA DISTRICT, PIN - 686540

- 2 STATE OF KERALA,
REPRESENTED BY THE SECRETARY, TRANSPORT DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 3 STATE OF KERALA,
REPRESENTED BY SECRETARY & CONVENER DEPARTMENT
PROMOTION COMMITTEE (HIGHER) TRANSPORT(C)
DEPARTMENT, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 4 THE TRANSPORT COMMISSIONER,
OFFICE OF THE TRANSPORT COMMISSIONER, TRANS TOWERS,
VAZHUTHACADU, THIRUVANANTHAPURAM, PIN - 695014
- 5 KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY, OFFICE OF THE KERALA
PUBLIC SERVICE COMMISSION, PATTOM,
THIRUVANANTHAPURAM, PIN - 695004

BY ADVS.
C.LEENA
V.PRINCE DEV
SR.GOV'T. PLEADER SRI.A.J.VARGHESE
SRI.P.C.SASIDHARAN, SC, KPSC

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR HEARING ON 01.04.2025, THE COURT ON 11.04.2025 DELIVERED THE FOLLOWING:

**CR****JUDGMENT****P.Krishna Kumar, J.**

The short legal issue to be determined in this case is whether, in view of the provisions contained in Note (i) to Rule 28(b)(i)(7) of Part II of the Kerala State and Subordinate Services Rules ('KS&SSR", for short), an officer against whom an FIR has been lodged in a graft case is entitled to be included in the select list for promotion.

2. The facts necessary for the determination of this case are as follows: the petitioner was included in the revised select list of Deputy Transport Commissioners for the year 2022. The first respondent, who is also a candidate included in the select list, challenged the validity of the inclusion



of the petitioner in the select list before the Kerala Administrative Tribunal on the ground that the petitioner is an accused in Vigilance Case No. VC/1/2019/SCK and thus he should not have been included in the select list in view of Note (i) to Rule 28(b)(i)(7) of Part II KS&SSR. Pursuant to the inclusion of the petitioner in Annexure A6 select list, the Government notionally promoted him as Deputy Transport Commissioner by Annexure A7 order. As there was no vacancy in the said cadre, the first respondent, being junior to the petitioner, was reverted to the post of Regional Transport Officer. Thus, the first respondent challenged Annexure A7 as well before the Tribunal.

3. We have heard Sri.Jaju Babu, the learned Senior Counsel, instructed by Sri.Brijesh Mohan, the learned counsel appearing for the petitioner, Smt.Leena, the learned counsel appearing for the



first respondent, and Sri.A.J.Varghese, the learned Senior Government Pleader.

4. As the question to be determined in this matter is the application of Note (i) to Rule 28(b) (i) (7) of Part II KS&SSR, it is reproduced below, with emphasis on the relevant part:

“Note.- (i) Officers under suspension and officers against whom criminal proceedings are pending in a Sessions Court or in any other higher Court for grave offences like murder, dacoity, etc; and Officers against whom departmental proceedings are taken for the imposition of a major penalty under the disciplinary rules applicable to them should not be included in the select list. But the suitability of such an Officer for promotion should be assessed at the relevant time by the Departmental Promotion Committee and a finding reached whether, if the Officer had not been suspended or the criminal proceedings/departmental proceedings had not been pending against him, he would have been recommended/selected for promotion. Where a



select list is prepared the Departmental Promotion Committee shall also make a finding as to what the position of the Officer in that list would have been but for the suspension or the criminal proceedings/departmental proceedings against him. The findings as to the suitability and the place in the select list of the officer should be recorded separately and attached to the proceedings. The proceedings of the Departmental Promotion Committee need only contain a note. The findings are recorded in the attached sheet of paper". The authority competent to fill the vacancy should be separately advised to fill the vacancy only on a temporary basis. **Officers against whom vigilance or departmental proceedings are taken after the charges have prima facie been established in a preliminary enquiry should not be included in the select list.** But, the cases of such Officers should also be assessed. The question of including them in the select list shall be considered when the result of the enquiry is known. However Officers against whom departmental proceedings are taken for the imposition of a minor penalty may be included in the select list provisionally if they are found suitable but for the pendency of disciplinary



proceedings initiated against them."

The legality of excluding officers against whom an FIR is lodged under the provisions of the Prevention of the Corruption Act is well settled. A Division Bench of this Court considered the said question in detail, with reference to the said Note, in **State of Kerala and Others v. Babu Prasad** (2019 KHC 940). The Bench also examined the correctness of the decision of a Single Bench of this Court in **Sasidharan K.K. v. State of Kerala and Others** (2008 (4) KHC 146) wherein it was held that the embargo on inclusion of a person in the select list for promotion, who faces a vigilance case would arise only when a charge is framed by the Vigilance Court against the said official. Overruling the above decision, the Division Bench held as follows:

"15. We are unable to subscribe to the findings in Sasidharan's case (supra). The provision considered by the Apex Court for



arriving at the conclusion in Janakiraman's case (supra) is distinct from Note (i) to R.28(b)(i) (7) of Par II KS&SSR. **The marked distinction in the terminology of Note (i), with respect to pendency of Sessions cases and taking of vigilance proceedings was omitted to be noted. The distinction in the procedure with respect to Sessions and Vigilance cases was also not considered.** The Code of Criminal Procedure which is applicable for Sessions Cases, do not provide for any preliminary enquiry and prima facie establishment of charges pursuant thereto as a precursor to registration of an FIR, but mandates the registration of FIR on information regarding the commission of a cognizable offence being given to an officer-in-charge of a police station. **Per contra, as per S.17A of the P.C Act previous approval from the appropriate Government is a prerequisite for conduct of any inquiry or enquiry, into any offence under the Act, alleged to have been committed by a public servant, after completion of which alone the FIR can be registered.**

16. Another crucial distinction is that criminal proceedings pending against an officer in a Sessions or higher Court, for grave offences like murder, dacoity etc. are not offences linked to the service of the accused



officer as a public servant, whereas vigilance proceedings are initiated specifically for commission of the offence of criminal misconduct by a public servant by abusing his official position. This would be akin to a disciplinary proceeding, where the requirement is the issuance of a charge-memo. If the appropriate Government, enjoined to grant an approval for registration of Vigilance case is of the opinion that the allegations are not grave enough for registration of FIR, it may direct a disciplinary proceeding to be carried on, in which event the next step would be issuance of a charge-memo. In the event of an approval being granted, the next step would be registration of an FIR.

17. The later part of Note(i), states about vigilance as well as departmental proceedings being taken against an officer on the charges being prima facie established in a preliminary enquiry. Paragraph 32 of the Vigilance Manual makes it clear that a preliminary enquiry by the Vigilance and Anti - Corruption Bureau can result in either (i) registration of a Vigilance case by the Bureau. (ii) enquiry by the Vigilance Tribunal or (iii) departmental action against the suspect officer. **The taking of disciplinary proceedings after conduct of**



preliminary enquiry by the Vigilance Department and prima facie establishment of charges is definitely more onerous than taking of disciplinary proceedings straightaway by the employer, for imposition of major penalty. The former part of Note (i), with respect to pending criminal proceedings before the Sessions or higher courts for grave offence and taking of disciplinary proceedings for imposition of major penalties, cannot therefore be equated with the later part, which is with respect to taking of vigilance or departmental proceedings after the charges are prima facie established in a preliminary enquiry. Thus understood, the words "officers against whom vigilance or departmental proceedings are taken after the charges are prima facie established in the preliminary enquiry" can only mean, initiation of departmental proceedings or vigilance proceedings. A vigilance case is commenced and deemed to be pending on submission of the report with recommendations, based on the preliminary enquiry conducted by the Vigilance and Anti - Corruption Bureau along with the approval granted by the Government for a particular course of action, be it registration of FIR or placement of the matter before the Vigilance Tribunal. *If the recommendation is for initiation of departmental proceedings, the commencement of*



the proceedings will be on issuance of charge sheet. Hence, we find that Sasidharan's case (supra) does not lay down the correct law. An officer against whom FIR is registered after conducting preliminary enquiry and obtaining approval for prosecution from the Government or recommended to be proceeded against departmentally by issuance of a charge-memo, is not eligible to be included in the select list. The DPC must adopt the sealed cover procedure in the case of such officers."

(Emphasis added)

5. It is relevant to observe that, the first part of Note (i) to Rule 28(b)(i)(7) of Part II KS&SSR provides that officers against whom criminal proceedings are pending in a Sessions Court for a grave offence or officers against whom departmental proceedings are taken for the imposition of major penalty should not be included in the select list, besides the officers under suspension. The later part of Note (i) specifies that officers against whom Vigilance or departmental proceedings are taken after



the charges have been *prima facie* established in a preliminary enquiry should also not be included in the select list.

6. However, the Single Bench did not notice the important distinction between the first part of the Note (i) and its later part. Accordingly, it was held that, as issuance of a memo of charges is *sine qua non* for deeming that a departmental proceeding is pending, the same analogy is to be applied to vigilance proceedings as well and thus, it can be said that a vigilance proceeding is pending for the purpose of Note (i) only if charges are framed by the Vigilance Court. Overruling this finding, the Division Bench observed that no preliminary enquiry is contemplated in a Sessions Case for *prima facie* establishing the charges as a precursor to the registration of an FIR. In contrast, Section 17A of the Prevention of Corruption Act requires previous



approval from the appropriate Government for conducting an enquiry into any offence under the Act and only after the completion of such preliminary enquiry with the approval of the appropriate authority, an FIR can be registered. Thus, framing of charge by the Vigilance Court is not necessary to attract the condition mentioned in Note (i), but the mere filing of the FIR after a preliminary enquiry is sufficient, the Bench held. Before arriving at the above conclusions, the Division Bench has meticulously discussed the procedure to be followed by the Vigilance Department while registering an FIR. The Division Bench has examined the relevant provisions contained in the Vigilance Manual and then concluded that the Single Bench omitted to note the marked distinction in the terminology of Note (i) with respect to the involvement of officers in a Sessions Case and a vigilance proceeding. The Bench further opined that unlike an ordinary criminal act,



vigilance proceedings are initiated against an officer alleging commission of criminal misconduct by abusing official position.

7. However, Sri.Jaju Babu, the learned Senior Counsel, took us through the last few lines in the said judgment of the Division Bench and argued that to attract the inhibition of Note (i), the mere registration of an FIR after conducting a preliminary enquiry is not enough, but approval for prosecution from the Government under Section 19 of the Prevention of Corruption Act is also required. We are afraid we cannot accept the above contention. The entire discussion made by the Division Bench was on a completely different aspect from the application of Section 19 of the Prevention of Corruption Act. Inasmuch as the provisions in Note(i) are concerned, the sanction order under Section 19 has no relevance. Section 19 comes into question only when



the court takes cognizance upon a final report. All that was discussed in the said case was about a previous stage of the investigation, viz., filing of an FIR after a preliminary enquiry with the approval of the appropriate authority. This is well evident from the discussion made by the court in paragraph 17 itself.

8. As Note (i) provides that officers against whom Vigilance proceedings are taken after the charges have *prima facie* been established in a preliminary enquiry should not be included in the select list, the Division Bench was called upon to consider when a 'Vigilance or Departmental proceeding' can be said to have commenced and be deemed pending. In paragraph 15, the court referred to the requirement of previous approval from the appropriate Government as a prerequisite for conducting a preliminary enquiry into the offences



under the Prevention of Corruption Act, before lodging an FIR. In paragraph 16, the Court held that if the appropriate Government, which is required to grant approval for the initiation of vigilance cases, finds that the allegations are grave enough, only then can an FIR be registered for such offences. The said observation was made by the Bench to clarify that lodging an FIR with the approval of the appropriate authority after conducting a preliminary enquiry is a more onerous process than initiating disciplinary proceedings by issuing a memo of charges. It is thus obvious that the reference made by the Court in its judgment was about the previous approval from the Government, which is required under Section 17A of the Prevention of Corruption Act. The Division Bench has not considered the question of necessity of obtaining sanction under Section 19 of the Prevention of Corruption Act for taking cognizance by the court. A judgment must be



understood as a verdict on facts and the applicable law. It is well settled that judicial observations must not be read in isolation or divorced from their context.

9. As rightly contended by Smt. Leena, the learned counsel for the first respondent, going by the plain meaning of the terms used in Note (i) to Rule 28(b) (i) (7) of Part II KS&SSR, only two conditions are to be satisfied for excluding an officer from the select list: (i) a *vigilance/departmental proceeding* is initiated and (ii) it was initiated after a preliminary enquiry to *prima facie* establish the *charge*. The term '*vigilance proceeding*' is to be understood as a Vigilance Case initiated by the Vigilance & Anti-Corruption Bureau and the term '*charge*' is to be understood as the allegations against the officer in such a case. If an FIR is lodged after such a preliminary enquiry against an officer by the Vigilance and Anti-corruption Bureau, the above twin



conditions are attracted and thus the name of the officer cannot be included in the select list. However, if it is only a disciplinary proceeding, the above conditions would be attracted only when a charge memo is issued. In short, the gist of the ratio in **Babu Prasad**'s case (supra) is that, if it is a vigilance case, initiation of an FIR after the approval of the preliminary enquiry report by the Government is sufficient to hold that the above twin conditions are satisfied.

10. There is no dispute that an FIR was registered against the petitioner herein after conducting a preliminary enquiry and after obtaining the previous approval. Hence Note (i) to Rule 28(b) (i) (7) of Part II KS&SSR prohibits his inclusion in the select list. The decision of the Tribunal is thus unimpeachable.

In the result, the original petition is



dismissed and the impugned order is upheld.

Sd/-

A. MUHAMED MUSTAQUE

JUDGE

Sd/-

P. KRISHNA KUMAR

JUDGE

SV

APPENDIX OF OP(KAT) 35/2025

PETITIONER'S ANNEXURES

- Annexure A1 TRUE COPY OF NOTIFICATION, GO(P) NO. 23/2022/TRANS. DATED 20.7.2022 ISSUED BY THE 2ND RESPONDENT IN OA
- Annexure A2 TRUE COPY NOTIFICATION, GO(P) NO. 24/2023/TRANS. DATED 11.10.2023 PUBLISHED BY THE ADDL. CHIEF SECRETARY AND CONVENER, DPC (H)
- Annexure A3 TRUE COPY OF GO(RT) NO. 564/2023/TRANS. DATED 16.12.2023 PROMOTING THE APPLICANT IN OA AS DEPUTY TRANSPORT COMMISSIONER
- Annexure A4 TRUE COPY OF THE LETTER NO. A1/40/2024-TC OF THE 3RD RESPONDENT IN OA TO ALL DEPUTY TRANSPORT COMMISSIONERS AND PROVISIONAL SENIORITY LIST OF DEPUTY TRANSPORT COMMISSIONERS AS ON 1.1.2024
- Annexure A5 TRUE COPY OF GO(RT) NO. 8/2024/TRANS DATED 5.1.2024 OF THE 1ST RESPONDENT IN OA IN COMPLIANCE WITH THE ORDER OF THIS HON'BLE TRIBUNAL OA(EKM) NO. 1298/2022
- Annexure A6 TRUE COPY OF THE NOTIFICATION AS PER GO(P) NO. 7/2024 /TRANS. DATED 30.3.2024 PUBLISHED BY THE 2ND RESPONDENT IN OA
- Annexure A7 TRUE COPY OF GO(RT) NO. 187/2024/TRANS. DATED 25.5.2024 OF THE 1ST RESPONDENT IN OA
- Annexure R1(a) TRUE COPY OF THE ORDER OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE , KOTTAYAM DATED 20.3.2024 IN VC NO. 5/2017/SCE



- Annexure R4 (a)** TRUE COPY OF THE GO(RT) NO. 80/2021/TRANSPORT DATED 15.2.2021 ISSUED BY THE 1ST RESPONDENT IN OA
- Annexure R4 (b)** TRUE COPY OF THE ORDER DATED 5.8.2024 OF THE HONBLE HIGH COURT OF KERALA CRL. MC NO. 2468/2021
- Annexure R4 (c)** TRUE COPY OF THE JUDGMENT DATED 21.6.2017 IN WP(C) NO. 430/2017 OF THE HONBLE HIGH COURT OF KERALA
- Annexure R4 (d)** TRUE COPY OF THE JUDGMENT DATED 19.10.2017 IN OP(CRL) NO. 427/2017 AND CONNECTED CASES OF THE HONBLE HIGH COURT OF KERALA
- Annexure R4 (e)** TRUE COPY OF ORDER DATED 22.6.2023 IN CRL. MC NO. 2804/2023 AND CONNECTED CASES OF THE HONBLE HIGH COURT OF KERALA
- Annexure A8** TRUE COPY OF THE FIR NO. 01/2019/SCK DATED 20.12.2019, REGISTERED BY VACB, SPECIAL CELL, KOZHIKODE POLICE STATION
- Annexure A9** TRUE COPY OF THE RELEVANT PAGES OF THE MINUTES OF ADHOC DPC (HIGHER) HELD ON 22.2.2024
- Annexure A10** TRUE COPY OF THE GO(RT) NO. 44/2019/TRANS. DATED 29.1.2019 ISSUED BY THE 1ST RESPONDENT IN OA
- Annexure A10 (a)** TRUE COPY OF THE RELEVANT PAGE OF THE FINAL REPORT NO. 9/2019 DATED 31.8.2019 SUBMITTED BEFORE THE HONBLE COURT AND ENQUIRY COMMISSIONER AND SPECIAL JUDGE , KOTTAYAM
- Annexure A11** TRUE COPY OF THE ORDER DATED 13.10.2023 OF THE HONBLE TRIBUNAL IN OA (EKM) NO.



1298/2022

- Annexure A12** TRUE COPY OF THE JUDGMENT OF THE DIVISION BENCH OF THE HONBLE HIGH COURT OF KERALA IN STATE OF KERALA AND ORS VS BABU PRASAD B 2019 KHC 940/2020 (OP KAT NO. 336/2019 DATED 26.10.2019)
- Annexure A13** TRUE COPY OF THE ORDER OF THE HONBLE TRIBUNAL IN OA NO. 834/2019 DATED 25.2.2020
- Annexure A14** TRUE COPY OF THE RELEVANT PAGES OF THE MINUTES OF ADHOC (DPC) (H) OF THE MOTOR VEHICLE DEPARTMENT HELD ON 8.2.2021
- Annexure R4 (f)** TRUE COPY OF THE QUESTIONNAIRE DATED 23.12.2024 SUBMITTED BY THE MISCE.APPLICANT /4TH RESPONDENT BEFORE THE PUBLIC INFORMATION OFFICER, HOME AND VIGILANCE , GOVT.SECRETARIAT, THIRUVANANTHAPURAM
- Annexure R4 (g)** TRUE COPY OF THE REPLY NO. VIG -A3/274/2024-VIG DATED 3.1.2025 ISSUED BY THE STATE PUBLIC INFORMATION OFFICER AND DEPUTY SECRETARY, VIGILANCE (A) DEPARTMENT TO ANNEXURE R4 (F)
- Exhibit P1** TRUE COPY OF O.A.NO.828/2024 ALONG WITH ANNEXURES A1 TO A7
- Exhibit P2** TRUE COPY OF THE STATEMENT FILED BY THE 1ST RESPONDENT IN OA IN OA NO. 828/2024 DATED 30.9.2024
- Exhibit P3** TRUE COPY OF MEMORANDUM FILED ON BEHALF OF THE 1ST RESPONDENT ALONG WITH DOCUMENTS IN OA NO. 828/2024, DATED 30.10.2024



- Exhibit P4** TRUE COPY OF ADDITIONAL STATEMENT FILED BY THE 1ST RESPONDENT IN THE OA NO. 828/2024 DATED 18.12.2024 ALONG WITH ANNEXURE R1 (A)
- Exhibit P5** TRUE COPY OF REPLY STATEMENT FILED BY THE PETITIONER/4TH RESPONDENT IN THE OA NO. 828/2024 DATED 29.10.2024 ALONG WITH ANNEXURE R4 (A) TO R4 (E)
- Exhibit P6** TRUE COPY OF MA.NO.1165/2024 IN OA.NO.828/2024 FILED BY THE APPLICANT IN OA DATED 14.6.2024 BEFORE THE KAT, THIRUVANANTHAPURAM
- Exhibit P7** TRUE COPY OF THE MA.NO.1166/2024 FILED BY THE 1ST RESPONDENT/APPLICANT IN OA.NO.828/2024 ALONG WITH ANNEXURE.A8
- Exhibit P8** TRUE COPY OF M.A NO.2042/2024 IN OA NO. 828/2024 FILED BY THE APPLICANT IN OA DATED 31.10.2024 ALONG WITH ANNEXURE A9
- Exhibit P9** TRUE COPY OF THE REJOINDER FILED BY THE 1ST RESPONDENT HEREIN/APPLICANT IN OA AGAINST THE REPLY STATEMENT OF THE 4TH RESPONDENT IN OA 828/2024 DATED 9.11.2024 ALONG WITH ANNEXURE A10 TO A12
- Exhibit P10** TRUE COPY OF THE MA NO. 6/2025 IN OA NO. 828/2024 FILED BY THE APPLICANT IN OA DATED 29.12.2024 ALONG WITH ANNEXURES A 13 AND A14
- Exhibit P11** TRUE COPY OF THE MA NO. 60/2025 IN OA NO. 828/2024 FILED BY THE 4TH RESPONDENT IN OA DATED 7.1.2025 ALONG WITH ANNEXURES R4 (F) AND R4 (G)
- Exhibit P12** TRUE COPY OF THE ORDER DATED 21.1.2025 IN OA NO. 828/2024 OF THE KERALA



**ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM**