
(2014) 08 KL CK 0058
In the High Court Of Kerala
Case No : Writ Appeal No. 871 of 2013

K. Natarajan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

Constitution of India, 1950 — Article 145, 317, 317(1), 317(2)
Right to Information Act, 2005 — Section 15, 16, 17, 17(1), 17(2)

Citation : (2014) 4 KLJ 97 : (2014) 3 KLT 1001 : (2015) LabIC 442 : (2015) 1 RCR(Civil) 238

Hon'ble Judges : Ashok Bhushan, Acting C.J.; A.M. Shaffique, J

Bench : Division Bench

Advocate : Thirumala P.K. Mani, Advocate for the Appellant; Roshan D. Alexander, Senior Government Pleader, Advocate for the Respondent

Judgement

Ashok Bhushan, Actg. C.J.

1. This Writ Appeal has been filed by the appellant challenging the judgment of the learned Single Judge dated 12.4.2013 in W.P.(C).No. 27844 of 2012, by which judgment, the Writ Petition filed by the appellant questioning the order of suspension dated 9.11.2012 passed by His Excellency the Governor, has been dismissed.

2. The brief facts of the case, which are necessary to be noted for deciding the issues raised in the Writ Appeal are: The appellant (hereinafter referred to as "the writ petitioner") was appointed as the Chief Information Commissioner by order dated 25.11.2011, issued by His Excellency the Governor, in exercise of power under subsection (3) of Section 15 of the Right to Information Act, 2005 (hereinafter referred to as "the RTI Act, 2005"). The writ petitioner assumed charge as the State Information Commissioner on 23.4.2011. The writ petitioner came to know that Additional Director General of Police (Vigilance & Anti Corruption Bureau) submitted a quick verification report on an allegation against the writ petitioner of he having influenced one Mr. V.G. Kunhan, Deputy

Superintendent of Police, who was investigating vigilance case registered against the former Chief Minister of Kerala. After receipt of the report from the Additional Director General of Police (Vigilance & Anti Corruption Bureau), the State Government submitted recommendation to His Excellency the Governor to place the writ petitioner under suspension under Section 17(2) of the RTI Act, 2005. On coming to know the aforesaid proceedings, the writ petitioner submitted a representation dated 8.11.2012 requesting His Excellency the Governor that if His Excellency the Governor is going to take any action against him on the basis of any recommendation of the Government of Kerala, he may be given an opportunity to prove his innocence. His Excellency the Governor, after noticing various allegations against the writ petitioner as disclosed in the report submitted by the Additional Director General of Police (Vigilance & Anti Corruption Bureau), came to the conclusion that the allegation of misbehaviour against the writ petitioner, if proved, are of grave and serious nature justifying his removal from office. His Excellency the Governor made a reference under Section 17(1) of the RTI Act, 2005 to the Supreme Court for enquiry and report and further directed that till orders are passed on receipt of the report of the Supreme Court on the reference already made, the writ petitioner be suspended from office. Challenging the order dated 9.11.2012, the writ petitioner filed the Writ Petition, which has been dismissed by the learned Single Judge as per the judgment impugned.

3. The learned Single Judge considered the submission raised in the Writ Petition and held that the suspension order was in accordance with Section 17(2) of the RTI Act, 2005.

4. Sri. Thirumala P.K. Mani, learned counsel for the appellant, in support of the Writ Appeal, has raised the following submissions:

(1) Suspension can be ordered under Section 17(2) of the RTI Act, 2005 by His Excellency the Governor only during enquiry, i.e., commencement of enquiry by the Supreme Court on the basis of reference under Section 17(1) of the RTI Act, 2005. Reference dated 9.11.2012 made by His Excellency the Governor under Section 17(1) of the RTI Act, 2005 could reach the Supreme Court only on 19.11.2012, hence there was no question of even initiation of enquiry on the date when suspension order was passed. The precondition for exercising power under Section 17(2) of the RTI Act, 2005 to suspend the writ petitioner is initiation and pendency of enquiry;

(2) The word "and" as used in sub-section (2) of Section 17 of the RTI Act, 2005 has to be read conjunctively and not disjunctively. The word "and" cannot be read as "or" as held by the learned Single Judge. The learned Single Judge, misinterpreting the provision of Section 17(2), has upheld the suspension of the writ petitioner;

(3) The Director, Vigilance & Anti Corruption Bureau has no jurisdiction to direct for enquiry, nor the State Government has any jurisdiction to submit a

recommendation to the Governor as has been made in the case of the writ petitioner. The enquiry with regard to alleged misbehaviour is to be conducted only by the Supreme Court, which power cannot be exercised by the Director. The enquiry that the Director has conducted was without associating the writ petitioner and being behind back of the writ petitioner could not have been relied on; and

(4) His Excellency the Governor has mechanically passed Exhibit P3 order on the recommendation of the State Government to place the writ petitioner on suspension, without application of mind and without forming any opinion on any objective material that there are sufficient allegation of misbehaviour against the writ petitioner.

5. Mr. Roshen D. Alexander, learned Government Pleader appearing for the respondent, refuting the submission of learned counsel for the appellant, contended that suspension order dated 9.11.2012 passed by His Excellency the Governor is well within the power under Section 17(2) of the RTI Act, 2005. Section 17(2) does not require exercise of power of suspension only after initiation of enquiry. The submission made by learned counsel for the writ petitioner that suspension can be ordered only during enquiry is incorrect. Suspension can be ordered by the Governor on making a reference under Section 17(1) of the RTI Act, 2005. There is no other restraint on the power of the Governor. The report of the Additional Director and the recommendation of the Government were relevant material, which could have been very well looked into by His Excellency the Governor exercising power under Section 17 of the RTI Act, 2005. The mere fact that the Government sent recommendation for placing the writ petitioner under suspension was immaterial. The order dated 9.11.2012 issued by His Excellency the Governor indicates that His Excellency has applied his mind to the allegations against the writ petitioner and the materials referred therein and the order of His Excellency the Governor is well within the scope of his power under Section 17 of the RTI Act, 2005. No opportunity is required to be given to the writ petitioner before taking a decision under Section 17(1) or 17(2) of the RTI Act, 2005. The writ petitioner is required to be given an opportunity in enquiry under Section 17(1), which opportunity he is already receiving after initiation of proceedings by the Apex Court under Section 17.

6. We have considered the submissions of learned counsel for the writ petitioner and the learned Government Pleader and perused the records.

7. Before we consider the submissions of learned counsel for the parties, it is necessary to look into the statutory provisions governing the field.

8. RTI Act, 2005 was enacted by the Parliament to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information

Commissions and for matters connected therewith or incidental thereto. Chapter IV of the RTI Act, 2005 provides for "the State Information Commission". Sub-section (3) of Section 15 of the RTI Act, 2005 provides that the State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of (i) the Chief Minister, who shall be the Chairperson of the committee; (ii) the Leader of Opposition in the Legislative Assembly; and (iii) a Cabinet Minister to be nominated by the Chief Minister. Section 16 deals with term of office and conditions of service and Section 17 provides for removal of State Chief Information Commissioner or State Information Commissioners. A stringent provision has been enacted as Section 17 of the RTI Act, 2005 to ensure independence of the State Chief Information Commissioner. Sections 17(1) and 17(2) of the RTI Act, 2005, which are relevant for the present case, are quoted as below:

"17. Removal of State Chief Information Commissioner or State Information Commissioner:- (1) Subject to the provisions of the sub-section (3), the State Chief Information Commissioner or any State Information Commissioner shall be removed from his office only by order of the Governor on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the Governor, has on inquiry, reported that the State chief Information Commissioner or a state Information Commissioner, as the case may be, ought on such ground be removed.

(2) The Governor may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the State Chief Information Commissioner or a State Information Commissioner in respect of whom a reference has been made to the Supreme Court under Sub-section (1) until the Governor has passed orders on receipt of the report of the Supreme Court on such reference."

9. Now, we proceed to take up first and second submissions raised by learned counsel for the writ petitioner. As both the submissions are inter connected, we take up both submissions together.

10. From the materials brought on record, it is clear that His Excellency the Governor by his order No. GS4-1847/12 dated 9.11.2012 made a reference to the Supreme Court of India under Section 17(1) of the RTI Act, 2005 for enquiry and report and also ordered for suspension of the writ petitioner till orders are passed on receipt of the report of the Supreme Court. It is useful to quote last paragraph of the order:

"In view of the above, I have made a reference to the Honourable Supreme Court of India under subsection (1) of Section 17 of the Act for inquiry and report. In the above circumstances, till orders are passed on receipt of the report of the Hon"ble Supreme Court on the reference already made, Shri K Natarajan, Information Commissioner, Kerala is suspended from his office."

11. The submission, which has been pressed by learned counsel for the writ petitioner is that His Excellency the Governor can order suspension only "during enquiry". His submission is that the enquiry contemplated under Section 17(2) is an enquiry, which is to be initiated by the Supreme Court on a reference made by His Excellency the Governor. It is submitted that in the present case, even the order of reference dated 9.11.2012 was received by the Supreme Court only on 19.11.2012, which is apparent from Exhibit P7 letter dated 20.11.2012 of the Resident Commissioner, Government of Kerala, New Delhi addressed to the Secretary to Governor, Kerala Raj Bhavan, Thiruvananthapuram. It is thus clear that the enquiry had not begun on 9.11.2011, when order of suspension has been passed by His Excellency the Governor. Learned counsel for the writ petitioner placed reliance on the following words in Section 17(2) of the RTI Act, 2005, i.e., "the Governor may suspend from office, and if deem necessary prohibit also from attending the office during inquiry....". It is submitted that where it is specifically provided that when the "power of Governor to suspend from office and power to prohibit from attending the office" is joined by the word "and", the power of suspension has also to be read only during enquiry. Subsection (2) of Section 17 contains two phrases, i.e., (a) the Governor may suspend from office; and (b) and if deem necessary prohibit also from attending the office during inquiry. Both the above phrases are separated by a "coma" and both phrases have different connotations. Suspension from office can be with prohibition from attending the office or without prohibition from attending the office. The second phrase, "and if deem necessary prohibit also from attending the office during inquiry" is an additional power given to His Excellency the Governor to prohibit from attending the office, which power is to be exercised "if deem necessary", which means, after each and every order of suspension, there need not be prohibition from attending the office. The words "during inquiry" find a place in second phrase, i.e., "and if deem necessary prohibit also from attending the office during inquiry". It is true that order prohibiting from attending the office can be passed only during enquiry. But, whether power of suspension can also be exercised during enquiry is the question to be answered. The pre-condition for order of suspension by His Excellency the Governor under Section 17 is contained in sub-section (2) itself to the following effect:

"....in respect of whom a reference has been made to the Supreme Court under sub-section (1)...." Thus, the statutory scheme as contained in sub-section (2) of Section 17 indicates that Governor may suspend from office the State Chief Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1). Thus, the power of suspension can be exercised by the Governor after making a reference under sub-section (1). Therefore, the pre-condition for exercise of power of suspension is only making of a reference. The words used in sub-section (2) are: "reference has been made". We are of the considered opinion that the words "during enquiry" used as noted above only qualify the order of prohibition from attending the office and does not qualify the words, "Governor may suspend from office". The learned

Single Judge has observed in paragraph 15 of the judgment that there is some obscurity in the terminology/wording of subsection (2) of Section 17. The learned Single Judge also observed that the conjunction "and" used in the subsection may actually have to be read as "or", in which event, there may not be any ambiguity. It is well settled principle of construction of statutes that conjunction "and" in some cases may also be read as "or". But in sub-section (2) of Section 17 of the RTI Act, 2005, we see no necessity of reading conjunction "and" as "or". The two phrases, i.e., (1) the Governor may suspend from office; and (2) and if deem necessary prohibit also from attending the office during inquiry, are not joined by conjunction "and", rather, they are separated by a "coma". The word conjunction "and" need not be read as "or", since there may be cases where power can be exercised of suspension as well as of prohibition from attending the office, if we read conjunction "and" as "or", only one of the powers can be exercised, which is not the intention of the legislature. We, thus, conclude that conjunction "and" need not be read as "or" and even on such reading, the power of suspension is not to be exercised necessarily during enquiry.

12. In statutory interpretation "punctuation" also plays an important role. When a statute is carefully punctuated and there is doubt about its meaning, a weight should undoubtedly be given to punctuation. In Section 17(2) of the RTI Act, 2005, the two phrases, i.e., "the Governor may suspend from office" and "if deem necessary prohibits also from attending the office during enquiry" are punctuated by a "coma". The punctuation "coma" separates the above two phrases and the words "prohibits also from attending the office during enquiry" are contained in the second phrase, which is separated by "coma". Thus, the words "during enquiry" cannot be read in both the above phrases, which are separated by a "coma". The Apex Court has occasion to interpret the use of punctuation "coma" in several cases. In this context, reference is made to the Apex Court judgment in M.K. Salpekar Vs. Sunil Kumar Shamsunder Chaudhari and Others, . In the above case, the Apex Court had considered Clause 13(3)(v) of the C.P. and Berar Letting of Houses and Rent Control Order, 1949. The above provision prohibits eviction of tenant on the ground that "tenant has secured alternative accommodation, or has left the area for a continuous period of four months and does not reasonably need the house". In holding that the requirement that the tenant "does not reasonably need the house" has no application when he "has secured alternative accommodation". Paragraph 7 of the said judgment is relevant, which reads as follows:

"7. Mr. Bobde pressed two additional points. It is urged that the clause "and does not reasonably need the house" applies as a necessary condition to both categories of cases, that is, where the tenant secures alternative accommodation as also where he has left the area for a period of four months, and this the courts below have failed to appreciate. We do not agree. The punctuation "coma" in the sub-clause after "alternative accommodation" and before the rest of the sentence indicates that the last part of the sub-clause namely "and does not reasonably need the house" governs only the second part of the sub-clause....."

13. Again in *Sama Alana Abdulla Vs. State of Gujarat*, the Apex Court, construing the words "any secret official code or password, or any sketch, plan, model etc.", held that the presence of "comma" after password showed that the adjective "secret" only qualified the expression "official code or password". The following was observed by the Apex Court in paragraph 7 of the said judgment:

"7. It was next contended that the High Court has misinterpreted Section 3(1)(c) and erroneously held that the sketch, plain, model, article or note or other document or information need not be secret for establishing an offence under that section. In order to appreciate this contention, it is necessary to refer Section 3 which reads as follows:-

3. Penalties for spying-(1) If any person for any purpose prejudicial to the safety or interests of the State-

(a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or

(b) makes any sketch, plan model or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or

(c) obtains, collects records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States."

The High Court held that the word "secret" in Clause (c) qualifies only the words "official code or pass word" and not "any sketch, plan, model, article or note or other document or information". The reason given by the High Court is that after the phrase "any secret official code or pass word", there is a comma and what follows is thus not intended to be qualified by the word "secret". The Calcutta High Court in *Sunil Ranjan Das v. The State*, (1973) 77 Cal WN 1061 has also taken the same view. It has held that the word "secret" in the said section qualifies officials code or password and not any sketch, plan, model, article or note or other document or information. This is clear from the comma and the word "or" which comes after the word "password."

14. The pre-condition for exercise of power of suspension is making of a reference under sub-section (1) of Section 17 as noted above. The word "reference" has been defined in P. Ramanatha Aiyar's *The Law Lexicon*, 3rd edition as follows:

"A reference is sending of a pending cause or some question therein by the Court in which it is pending to a private person to hear and determine the cause or some question therein or to take evidence and report the same, with or without his opinion thereon, to the Court. The person to whom the reference is made is usually termed a referee."

15. Sub-section (2) of Section 17 of the RTI Act, 2005 uses the word "made". The word "made" is defined in P. Ramanatha Aiyar's The Law Lexicon, 3rd edition as follows:

"The word "made" is part and past participle of the word "make" which means "cause to exist or come about; bring about or perform".

16. From the above discussion, it is clear that the Governor is empowered to order suspension under subsection 17(2) after making reference under Section 17(1). Exhibit P3 order dated 9.11.2012 contains making of reference under Section 17(1) and thereafter order for suspension exercising power under Section 17(2). Thus, the order of suspension dated 9.11.2012 cannot be faulted on above two submissions of learned counsel for the writ petitioner.

17. The provision of Article 317 of the Constitution of India is a provision *pari materia* to Section 17 of the RTI Act, 2005. Under Article 317 of the Constitution of India, the President of India, after making a reference to the Supreme Court, in the case of Union Commission or a Joint Commission, and the Governor in the case of a State Commission, may suspend from the office the Chairman or any other member of the Commission. Sub-clauses (1) and (2) of Article 317 of the Constitution of India, which are *pari materia* provisions, are quoted below:

"317. Removal and suspension of a member of a Public Service Commission.- (1) Subject to the provisions of clause (3) the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

(2) The President, in the case of the Union Commission or a Joint Commission, and the Governor in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference."

18. The Apex Court had occasion to consider provision of Article 317(2) of the Constitution in *In Re: Smt. Sayalee Sanjeev Joshi, Member, Maharashtra Public Service Commission*, . In the above case, His Excellency the Governor made a reference envisaged under Article 317 of the Constitution and also suspended the respondent, who was the Member of Maharashtra Public Service Commission. The Apex Court held that since request was made to the President of India to act in accordance with Article 317(1) of the Constitution, placing the respondent under suspension, was proper. Following was laid down in paragraph 2 of the judgment:

"2. The said respondent joined the Maharashtra Public Service Commission as a

member on 8-5-2001. She was arrested on 8-6-2003 in a crime registered in connection with a complaint lodged by the Public Service Commission relating to malpractices in respect of an examination conducted in the year 1999. Twenty-one others were also arrested. The respondent was lodged in jail. This led to His Excellency the Governor of Maharashtra to request His Excellency the President of India to initiate action under Article 317 of the Constitution of India for her removal. He also suspended her from office until an order had been passed by the President under clause (1) of Article 317 of the Constitution. It is seen that the respondent was subsequently released on bail though at least on three earlier occasions, her prayers for bail were rejected. Since a request was made to the President of India to act in terms of Article 317(1) of the Constitution, the placing of the respondent under suspension under Article 317(2) of the Constitution was proper. Considering the nature of the scam that emerged and the constitutional position enjoyed by the Public Service Commission, the reference to this Court under Article 317(1) of the Constitution is seen to be the proper step to be taken."

19. In another case, *Ram Kumar Kashyap and Another Vs. Union of India (UOI) and Another*, , the Apex Court, upholding the suspension order passed under Article 317(2) of the Constitution of India, had held that the petitioners were not entitled for any opportunity before passing the order of suspension. The following was laid down in paragraphs 10, 11, 12 and 13:

"10. Furthermore, this court in Reference under Article 317(1) of the Constitution, *H.B. Mirdha (Dr.) In re* has held that no Hearing or opportunity of showing cause against the proposed reference under Article 317(1) is necessary before making the actual reference. The relevant observations are as follows (Para. 2):

"2. We have heard the learned Additional Solicitor General for the Union of India, as also the learned counsel for the respondent on the preliminary objections. We are of the opinion that no hearing or opportunity of showing cause against the proposed reference under Article 317(1) is necessary before making the reference. The first objection is overruled."

11. In *In Re: Smt. Sayalee Sanjeev Joshi, Member, Maharashtra Public Service Commission*, , which concerned the removal of a member of the Maharashtra Public Service Commission under Article 317 on grounds of misbehaviour, this court had observed: (SCC p. 552, para 2)

"1.... Since a request was made to the President of India to act in terms of Article 317(1) of the Constitution, the placing of the respondent under suspension under Article 317(2) of the Constitution was proper."

12. It is clear from the perusal of the above cases that the petitioners were not entitled to an opportunity to show cause or to be heard before the point of time that the orders of suspension were passed by the Hon"ble Governor of Haryana under Article 317(2) after the President had referred the matter to the Supreme

Court. The rationale behind empowering the Governor of a State to issue such an order of suspension even before the reference is actually decided by the Supreme Court is to maintain the public trust and confidence in the impartial and honest working of the said Public Service Commission.

13. It is a prerogative given to the State Executive, but the members so suspended are given the opportunity to present their cases when the actual reference is decided upon by the Supreme Court. It is open to the members so suspended to present their point of view at that stage. After all, it is only after the merits of the case have been examined that the Supreme Court arrives at an answer to the reference and communicates the same decision to the President for further action."

20. In view of the aforesaid discussion, we are of considered opinion that Governor was fully empowered to place the writ petitioner under suspension after making a reference to Section 17(1) of the RTI Act, 2005 and there is no requirement of law that suspension should be ordered only after enquiry has commenced by the Supreme Court on reference under Section 17(1).

21. Now, we take up the third submission of learned counsel for the writ petitioner, i.e., the Director of Vigilance has no jurisdiction to direct for enquiry, nor the State Government has any jurisdiction to submit recommendation to the Governor for taking action under Section 17 of the RTI Act, 2005.

22. The State has filed counter affidavit in the Writ Petition. In paragraphs 6, 7 and 8 of the counter affidavit, the detailed facts, which led to conducting of an enquiry by Additional Director General of Police (Vigilance and Anti Corruption Bureau), has been mentioned. When letter was received by Deputy Superintendent of Police (Vigilance and Anti Corruption Bureau), Kozhikode, there was no lack of authority in Additional Director General of Police (Vigilance and Anti Corruption Bureau) to check the correctness of the information. After receiving the quick verification report, Government thought that it is appropriate to place the same before His Excellency the Governor, since the allegations against the officer concerned and the findings in the report are grave in nature. Mere form of submitting the relevant information containing the recommendation is immaterial. Submission of information by way of recommendation by the State Government does not take away the facts, which were brought into the notice of His Excellency the Governor. For exercising of power under Section 17 of the RTI Act, 2005 by the Governor, His Excellency can look into any material coming into notice from any source, may be, by the Government, by a private person or on enquiry by His Excellency himself or information received by His Excellency himself. Section 17(1) cannot be read in the manner to exclude any information or recommendation submitted by the State Government to the Governor. Thus, we are of the view that no error was committed by His Excellency the Governor in looking into the recommendation/report submitted by the State Government referring to the report of Additional Director General of Police (Vigilance and Anti Corruption Bureau). As noted above, before exercise of power under Section

17(2), no opportunity is to be given by the Governor to the Chief Information Commissioner, nor any opportunity was required to be given by the Governor before passing order of suspension. Reference is made to the Apex Court judgment in Ram Kumar Kashyap's case (supra). The Apex Court, in the above judgment, the following was laid down in paragraph 16:

"16. It is very clear that since the Public Service Commissions are a constitutional creation, the principles of service law that are ordinarily applicable in instances of dismissals of Government employees cannot be extended to the proceedings for the removal and suspension of the members of the said Commissions. Hence, we are of the opinion that the en bloc suspension of the 8 Members and the Chairman of the Haryana Public Service Commission by the Hon"ble Governor of Haryana by an order dated 09.08.2008 under Article 317(2) of the Constitution and the impugned notification dated 09.08.2008 are valid and not liable to be quashed. The Writ Petitions are dismissed."

23. The submission of the writ petitioner that Additional Director General of Police (Vigilance and Anti Corruption Bureau) ought to have given an opportunity to the petitioner before submitting a report, also does not have any substance. Additional Director General of Police (Vigilance and Anti Corruption Bureau) was directed to submit quick verification report with regard to correctness of an allegation. He was not holding any kind of enquiry in which the writ petitioner was required to be associated. Section 17 is contemplated to give an opportunity to the Chief Information Commissioner in enquiry by the Apex Court. Section 17 does not contemplate giving of an opportunity to the Chief Information Commissioner at any stage prior to holding of an enquiry. Thus, on the above submission, we cannot find any infirmity in the order of the Governor placing the petitioner under suspension.

24. Now, we come to the last submission made by learned counsel for the writ petitioner. He submits that the Governor has mechanically passed the order of suspension without application of mind. The Apex Court in *Re Dr. H.B. Mirdha*, In *Re [(2005) 6 SCC 789]*, has held in reference under Article 317(1) that no hearing or opportunity of showing cause against the proposed reference under Article 317(1) of the Constitution was necessary before making the reference. Only thing is that before making a reference, the President/Governor has to apply his mind before making a reference after being prima facie satisfied that a case of misbehaviour was made. In *In Re: Mehar Singh Saini, Chairman, HPSC and Others*, the Supreme Court has held as follows:

"31. Making reference to this Court under Article 317(1) of the Constitution invokes the reference/advisory jurisdiction of this Court. In the scheme of the Constitution relating to this aspect, it is clear that before the reference can be made to this Court, certain procedure is required to be satisfied. The Governor, acting on the advice of the State Government, would request the President for taking steps for removal of a member in accordance with the provisions of Article 317(1) of the Constitution. There is requirement of proper application of mind by

the President while making a reference to this Court and it is but natural that reference to this Court would be made only where the President is satisfied that a prima facie case of misbehaviour is made out."

25. Order dated 9.11.2012 making reference under Section 17(1) and placing the writ petitioner under suspension is Exhibit P3. The said order indicates that His Excellency the Governor has noted the relevant facts, including the allegations against the writ petitioner in the quick verification report submitted by the Additional Director General of Police (Vigilance and Anti Corruption Bureau). His Excellency the Governor has also applied his mind towards the allegations and the report referred to therein and the nature of allegations against the writ petitioner. It is useful to quote the following observations in the order:

"In view of the serious allegation that the said Shri K Natarajan, was frequently contacting over phone, Shri V.G. Kunhan, the Deputy Superintendent of Police (Vigilance & Anti corruption Bureau), Northern Range, Kozhikode from March, 2012 and was giving instructions to him to absolve Shri V.S. Achuthanandan, Leader of Opposition, Kerala Legislative Assembly from a Vigilance Case pending against him relating to the assignment of land to one of his relatives, the Director, Vigilance & Anti Corruption Bureau, ordered to conduct an enquiry and submit a report regarding the actual facts. Accordingly, the Additional Director General of Police, Vigilance Investigation has conducted a quick verification and submitted a report stating that the verification conducted by her has revealed that the allegation against Shri K Natarajan, Information Commissioner of Kerala that he contacted several times, the said Shri V.G. Kunhan, Deputy Superintendent of Police, who is currently the Investigating Officer of Vigilance Case No. 1/12/KSD to absolve Shri V.S. Achuthanandan, Leader of Opposition in the Kerala Legislative Assembly, an accused in that case, has been prima facie found to be true. The quick verification report prima facie proved that Shri K Natarajan, Information Commissioner of Kerala has abused the power vested upon him as Information Commissioner and has also failed to maintain his integrity by frequently calling the Officer entrusted with the task of investigating in a sensitive corruption case to influence him in the conduct of the investigation and also to pressurize him to absolve Shri V.S. Achuthanandan, Leader of Opposition, an accused in the said case. Based on the report, the Government of Kerala has recommended action under sub-sections (1) and (2) of Section 17 of the Act against Shri K Natarajan. I am satisfied that the allegations of misbehaviour as disclosed from the verification report and the recommendation of the Government, if proved, are of grave and serious nature justifying his removal from office."

26. The above part of the order clearly indicates that not only His Excellency the Governor applied his mind to the materials placed before him, but he was also prima facie satisfied that misbehaviour if proved may justify the removal from office. Thus, it cannot be said that there is no application of mind by His

Excellency the Governor. Since the order passed by His Excellency the Governor is a reasoned order after due application of mind, it cannot be said that His Excellency mechanically passed the order after receiving the recommendation from the State Government.

27. Thus, both the clauses, as noted above, are separated by conjunction "coma". The words "during enquiry" qualifies only second clause and in the first clause, the words "during enquiry" cannot be read, hence it is not necessary to order suspension only during enquiry.

28. We, thus, are of the view that the order of His Excellency the Governor does not deserve to be interfered with on the above ground. None of the submissions made by learned counsel for the writ petitioner/appellant have any substance. The learned Single Judge did not commit any error in dismissing the Writ Petition. There is no merit in the Writ Appeal, which is accordingly dismissed.