(2015) 09 KL CK 0156

In the High Court Of Kerala

Case No : WP(C) No. 16144 of 2014 (S)

Kadakampally Manoj APPELLANT

Vs

Kerala State Cashew Development Corporation Ltd. and Others RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:

Citation : (2015) 09 KL CK 0156

Hon'ble Judges : Ashok Bhushan, C.J;P.R. Ramachandra Menon, J

Bench : Division Bench

Advocate : A. Sudhi Vasudevan, K. Pushpavathi and T.M. Kochunni, for the Appellant; C. Unnikrishnan, SC, Advocates for the Respondent

Final Decision : Allowed

Judgement

P.R. Ramachandra Menon, J—The petitioner is before this Court by way of this ''Public Interest Litigation'', projecting various deeds and misdeeds alleged on the part of the second and third respondents with regard to the affairs of the first respondent company, in their capacity as the Managing Director and the Chairman respectively, resulting in Crores of loss to the public exchequer, involving various offences under the relevant provisions of law, which are essentially sought to be enquired into by the Central Bureau of Investigation (CBI for short) because of the extensive nature of operations involving procurement of Raw Cashew Nuts (RCN in short) from different places in India and abroad and sale of cashew kernels by way of shady transactions, in violation of the pre-set norms/guidelines/instructions.

2. The challenge is mainly based on various reports prepared and submitted by the Comptroller and Auditor General of India (Exts. P2 to P4 - 9th respondent), the reports submitted by the Finance Department at different levels (Exts. P5 to P7 - 7th respondent) and the report submitted by the Public Sector Reconstructing and Internal Audit Board (RIAB - 10th respondent vide Ext. P8). The necessity pointed out to conduct a detailed vigilance enquiry vide Ext P11

(d) by the Vigilance Department (5th respondent) is stated as watered down with the approval of the concerned Minister, vide Ext. P11, causing the matter only to be dealt with by the Industries Department. It is also alleged that the file was simply buried by the Industries Department, for dubious reasons. Incidentally, it is to be noted here, that the ''Expert Committee/Special Committee'' appointed by the Government has filed a report before this Court [which is stated as accepted by the Government, ordering Vigilance Enquiry, as submitted by the Advocate General] which recommends supersession of the Board with further remedial measures to put the first respondent Corporation back to track, however keeping silence with regard to the mischief stated as already committed and the offences, if any, involved. Whether the vigilance enquiry now stated as ordered by the Government, pursuant to the Special/Expert Committee report will be adequate enough to meet the requirements or whether it has to be investigated by the ''CBI'', to have a logical conclusion, is the point to be considered by this Court.

3. The first respondent, which is a Company, incorporated under the relevant provisions of the Companies Act 1956, in the year 1969, with intent to develop the cashew industry, help the farmers and to provide employment to cashew workers in the State. Raw cashew nuts are procured by the 1st respondent Corporation from different sources and allotted to as many as 30 factories run by the said respondent, for processing. After grading, the cashew kernels are sold on the basis of the rates fixed; but allegedly because of the total mismanagement in the affairs of the first respondent, huge loss was being incurred. This led to audit by the Comptroller and Auditor General of India (C & AG), who conducted extensive probe for a prior period of 5 years and submitted Exts. P2 to P4 reports in respect of different years ending up to 31.03.2013. As per the said reports, the C & AG (10th respondent) found that the procurement of cashew was being done without following the proper procedure and same was the position with regard to the sale of cashew kernels as well. A particular trader, by name "JMJ Traders" was identified and the said establishment was being given undue advantage and supply orders for Crores. Analysis of the purchases for the period from 2008-''09 to 2012-''13 revealed that about 48 orders for Rs. 1.38 lakhs MT RCN were involved, out of which 29 orders for 0.99 lakhs MT (72.28 %) valuing 608.93 crores were placed with JMJ Traders, who was only a local trader. In fact, JMJ traders procured the goods through some intermediaries dealing with the sellers abroad and some local purchases were also being effected by them. It was found that the procurement process of the first respondent Corporation was in total violation of the recommendation of the Committee of Public Undertaking (COPU) and that of the Expert Committee (EC). The 10th respondent/the Comptroller and Auditor General observed in Ext. P4, that there was extensive dependence on a local trader for procurements and there was unauthorised diversion of grants and furnishing incorrect utilization certificates; that various deficiencies/malpractices were there with regard to the purchase of African raw cashew nuts; that no attempt was made to import through the State Trading

Corporation of India Limited; that there was lack of purchase planning; that there were several deficiencies in tendering, apart from lack of adequate publicity; that the terms and conditions were defective in several respects; that there was execution of High Sea Sale agreements with ''JMJ Traders'' and such other aspects. Vide Ext. P4, the 10th respondent/C & AG referred to various incriminating circumstances and made specific recommendations to conduct a detailed investigation.

4. The Finance Wing of the Government had conducted a surprise inspection in the first respondent Corporation on 04.06.2012 to verify all their accounts for the last three financial years i.e. for the period from 2009-''10 to 2011-''12. Large scale fund diversion was noted by the said authority, who also observed as per Ext. P6, that audit of the accounts was done only upto the year 2006-''07 and it was pending for the last five financial years, though provisional accounts were prepared upto 2011-''12. In Ext. P7 report of the Additional Chief Secretary Finance (7th respondent) the collection of Crores of Rupees by way of advance from ''benami companies'' without any agreement or permission of the Board was noted, observing that the explanation offered was totally unsatisfactory. The adverse consequences resulted, with reference to the procurement of Raw Cashew Nuts at much higher rates by not following the prescribed norms, the sale of cashew kernels for price less than the market value and the ''modus operandi'' have been discussed in detail with specific recommendations. After entering into agreement to purchase ivory coast raw cashew nuts with M/s. Cee Bee Commodities company on the basis of the tender held on 26.04.2013, the first respondent Corporation effected payment for purchase of cashew nuts to "Asia Commodities", who had not even participated in the tender, thus involving serious lapse leading to tax evasion, by the concerned companies. The necessity to take immediate disciplinary action against the Liaison Officer, Assistant Personnel Manager, a staff of the Personnel Department and an Office Attender, who tried to obstruct the inspection by the Finance Wing [which was empowered by the Government to check financial malpractices in the Government Institutions and Government Department] was specifically pointed out and recommended.

5. The RIAB/10th respondent conducted an extensive scrutiny in respect of the allegations levelled against the affairs of the first respondent Corporation and after meticulous analysis of the facts and figures, submitted Ext. P8 report to the Additional Chief Secretary to the Government [Industries and Commerce Department], revealing the unholy nexus between the second respondent and the establishment by name ''JMJ traders''. The said respondent requested the Government to keep the second respondent out from the present position, to ensure that all records are made available to the Investigating Agency, to have the effective investigation and also to estimate the actual loss. The necessity to conduct a detailed investigation by the competent Investigating Agency within a time frame was highlighted in the said report.

6. The petitioner contends that ''CBI investigation'' was sought for earlier, by the concerned petitioners, who filed W.P.(C) No. 28811 of 2010, referring to large scale corruption and such other activities in the 1st respondent Corporation. The grievance projected therein was that, though the Government had directed the 4th respondent therein (Director, Vigilance and Anti Corruption Bureau - 6th respondent herein) to conduct an enquiry into the matter, it had reached nowhere. The proceedings which transpired on the floor of the Legislative Assembly with reference to the alleged malpractices and corruption were also referred to. The learned Government Pleader/Public Prosecutor submitted before the Court that, based on the report of the Comptroller and Auditor General, the Government had directed the Director of Vigilance to conduct an enquiry as per letter dated 14.07.2010 and that the report was awaited. It was accordingly, that the writ said petition was disposed of, as per Ext. P10 judgment, directing the 4th respondent therein to expedite the enquiry ordered by the Government in their letter dated 14.07.2010 and to submit report before the appropriate authority, as early as possible, bearing in mind the gravity of the allegations and the fact that already sufficient time has elapsed, which would only help the culprits, if any.

7. It is contended by the petitioner that, in spite of the necessity to conduct a detailed ''Vigilance Enquiry'' as pointed out by the Vigilance Department, at the level of the Secretary and the sanction sought for, the Under Secretary (by name Madhu), doubting whether ''Vigilance enquiry'' was necessary, put up a note as ''X'' on 16.04.2013 to the effect that a copy of the letter of the DVACB (Department of Vigilance and Anti Corruption Bureau) and its enclosures might be forwarded to the Industries Department and that department might be requested to consider the findings and report and take appropriate action. This was disagreed by the Additional Secretary to Government, Vigilance Department on 20.04.2013 and requested to order a Vigilance Enquiry, which proposal was affirmed by the Principal Secretary (Home and Vigilance) on 22.04.2013. Despite this, the concerned Minister endorsed on the file, that the action suggested at para marked ''X'' (i.e., to forward the proceedings to the Industries Department and to have appropriate action by them) might alone be pursued. This in turn was communicated by the Principal Secretary to the Government (Vigilance Department) to the Additional Secretary to the Industries Department, vide Ext. P11 dated 18.05.2013 under the signature of the very same person who put up the note (by name Madhu, the Under Secretary), informing that ''Vigilance Enquiry'' was not necessary and that the Industries Department might take appropriate action considering the reports, adding that the same was having approval of the concerned Minister (Home & Vigilance). This made the petitioner to approach this Court by filing the writ petition, seeking for immediate interference and to cause the matter to be enquired into, through the CBI and also to direct the concerned respondent to remove the respondents 2 and 3 from the posts of Managing Director and Chairman respectively and to appoint persons of high integrity and reputation in the said posts.

8. 8th respondent (Industries Department) has filed a counter affidavit dated 16.08.2014, pointing out that the Government has constituted a Committee as per Ext. R8(a) Government Order dated 25.07.2014 consisting of a serving senior Government Official, a subject expert and a financial expert, to study the existing problems in the first respondent Corporation and submit a report within three months. It is stated that there is no necessity for a CBI investigation into the allegations at present; adding that, on receipt of report of the Committee, the Government would take necessary steps in tune with the same.

9. When the matter came up for consideration before this Court on 20.08.2014, the writ petition was admitted and an interim order was passed, wherein the submission made by the learned Advocate General, with reference to Ext. R8(a) Government Order, was also referred to. Observing that the Government has included a private Chartered Accountant in the Committee, the Bench directed him to be substituted by a Chartered Accountant or Auditor of the Government Department/Organization, and the proceedings of the Committee were directed to be monitored by the Additional Chief Secretary (7th respondent), who was required to convene the meeting and submit a report. The Bench also directed the 7th respondent/Additional Chief Secretary Finance to file an affidavit bringing on record the progress made in the matter.

10. In the course of further proceedings, the 7th respondent/Addl. Chief Secretary (Finance) submitted a report before this Court in a ''sealed cover'', marking the same as ''strictly confidential'', expressing the difficulties felt by him in monitoring the Committee meetings and verification of all the records/ evidence, pursuant to the order passed by this Court. The parties to litigation made a submission on 30.03.2015, that they are kept in the dark as to the contents, as copy was never given to them and hence the report could not be looked into by this Court. The matter was adjourned 09.04.2015, on which day a statement was filed on behalf of the 8th respondent, referring to the meetings held on different dates and as to the inspection being conducted by the Special Committee appointed by the Government. It was stated that a further period of ''three months'' was necessary to complete the proceedings and to file report. This Court observed on 09.04.2015, that the report submitted by the 7th respondent/Addl. Chief Secretary marking the same as ''strictly confidential'' was apparently pursuant to the order dated 20.08.2014, which directed him to monitor the proceedings of the Committee and to ensure that all necessary documents were made available to the Committee and shall oversee the other needs and necessity of the Committee. In the said circumstances, this Court found it proper to cause a copy of the said report to be served to all the parties and this was ordered accordingly, granting liberty to file objections, if any. Based on the submission made by the learned Advocate General on 26.05.2015 seeking for further time to file report by the Special Committee, one more opportunity was given, granting two more weeks'' time. Reluctantly, five more days'' time was granted as per the order dated 16.06.2015 and finally, report dated 23.05.2015 of the Special Committee was submitted on 22.06.2015 along with a

memo. In the meanwhile, the 7th respondent/Addl. Chief Secretary had submitted another report in a ''sealed cover'', marking the same as ''strictly confidential''. This Court did not find it necessary to open the same and it was ordered to be kept intact in the Registry.

11. Separate counter affidavits have been filed on behalf of the respondents 1, 2 and 3. Four different Trade Unions functioning in the first respondent Corporation sought themselves to get impleaded in the writ petition by filing I.A. No. 4282 of 2015 apparently projecting the cause of the workers which has been objected to by the petitioner by filing a counter affidavit, contending that the Trade Unions are acting hand-in- glove with the respondents 2 and 3. The writ petition was heard on 23.06.2015, which was continued on 24.06.2015 and it was concluded on the next date, i.e. 25.06.2015.

12. Mr. Sudhi Vasudevan, the learned Counsel appearing for the petitioner addressed the Court with reference to the contents of various reports of the CAG, (Exts. P2 to P4), reports of the Finance Wing of the Government (Exts. P5 to P7), the report submitted by 10th respondent-RIAB (Ext. P; all of which project the necessity to conduct a detailed investigation as to the various instances of alleged corruption, mischief, mismanagement and fraudulent activities resulting in loss to the tune of crores. The learned Counsel also submitted that, despite the specific remarks with reference to the contents of the report and the necessity pointed out to conduct a detailed Vigilance Enquiry; a ''Note'' was put up by the Under Secretary (by name Madhu) doubting whether it was necessary and proposing further action by the Industries Department. In spite of the ''dissent'' expressed by the Addl. Secretary (Vigilance Department), which was affirmed by the Principal Secretary (Home and Vigilance), the proceedings were simply caused to be forwarded to the Industries Department, as ordered by the Hon''ble Minister on 25.04.2013. It is also pointed out that a detailed enquiry was conducted by the Addl. DGP (Intelligence) and on seeking for a copy of the said report, invoking the power and procedure under the RTI Act, it was denied to the petitioner vide Ext. P12, referring to the exemption under Section 24(4) of the said Act. This being the position, the materials on record clearly reveal that the wings of the Vigilance Department have been clipped and as such, detailed investigation has necessarily to be conducted by the 12th respondent/CBI. Reliance is sought to be placed on the verdicts of the Apex Court in Vishwanath Chaturvedi Vs. Union of India (UOI) and Others, (2007) 4 JT 144 : (2007) 3 SCALE 714 : (2007) 4 SCC 380 : (2007) 4 SCR 448 : (2007) AIRSCW 6406 : (2007) 8 Supreme 309 and in State of Kerala and Others Vs. B. Surendra Das Etc., AIR 2014 SC 2762 : (2014) AIRSCW 3968 : (2014) 3 SCALE 421 as to the scope of enquiry in Public Interest Litigations and as to the sanctity of the reports of the authorities like the C&AG. Reference is also made to the report submitted by the Special Committee appointed by the Government, where the insinuating/ incriminating circumstances have been clearly given, which, if proved, will involve serious offences; in turn contending that the investigation has to be on a wider circle, as it does not stand in the hold of the organs of the State.

13. Mr. K.P. Dandapani, the learned Advocate General submits that the Government has accepted the report of the Special/Expert Committee(copy of which has been produced before the Court) and that the Government has ordered a ''Vigilance Enquiry'' into all the relevant aspects. In the said circumstance, it is stated, no investigation by the CBI is required.

14. Mr. M.R. Rajendran Nair, the learned Sr. Advocate, who appeared on behalf of the second respondent/K.A. Ratheesh, Managing Director of the first respondent Corporation, made a submission that the petitioner has no ''locus standi'' to file the writ petition seeking for CBI investigation. It is stated that the second respondent is a qualified Engineer with MBA and Doctorate in the relevant field, who has been working hard to streamline the activities of the first respondent Corporation with intent to provide maximum working days to the workers. It was with this intent that raw cashew nuts were being procured and the sales were being done, meeting the organisational requirements. It is pointed out that the turnover of the Corporation has got increased by several folds and more ''value added products'' have been introduced by the efforts taken by the second respondent, though it has not been appreciated by anybody in the right spirit and perspective. It is added that there is no management deficiency and no labour unrest was there during the second respondent''s regime. The learned Counsel also makes a reference to the ''argument note'' and the contents therein, asserting that no CBI enquiry is warranted under any circumstance.

15. Mr. Devan Ramachandran, the learned Counsel appearing for the third respondent/R. Chandrasekharan, Chairman of the first respondent Corporation sought to project the picture in a wider spectrum, as to the traditional set up of the industry as in the case of other sectors like Handicrafts, Handlooms, Sericulture, Coir etc. It is stated that the reports sought to be relied on by the petitioner is more with regard to the ''loss'' sustained by the Company, which shall not be the basis for ordering CBI enquiry in respect of the affairs of the first respondent/Corporation which is a more labour intensive industry. The question to be considered is not whether any loss is there, but if the loss is caused deliberately, involving any offence to be enquired into. It is stated that there is shortage of cashew and that the demand-supply ratio is not stable; adding that the loss has now come down substantially. It is stated that the first respondent cannot purchase raw cashew nuts from the farmers directly during the season from ''February to May'' every year; unless working capital is available in ''February-May''. It is stated that the petitioner only wants to lock horns with the third respondent, merely for the reason that he was proceeded against by the third respondent, who was the President of the Trade Union for pursuing steps in the name of the Trade Union, which in fact were detrimental to the interest of the Trade Union (vide Ext. R3(10) dated 21.06.2011). It is stated that the third respondent cannot contract with any foreign agency and procurement of raw cashew nuts can be made only through the involvement of intermediaries, who purchase raw cashew nuts from the foreign supplier, add their cost/expense and profit, and pass it on to the traders like ''JMJ Traders'', to whom work orders

were given by the Corporation and as such, the price paid to the ''M/s. JMJ Traders'' is the price paid in India.

16. It is also brought to the notice of this Court that the third respondent assumed charge only in the year 2012 and that there is no basis for the allegations that this respondent is a relative of the 2nd respondent and are acting in collusion. It is stated that the necessity to divert the funds/grants to appropriate extent was quite known to the Government; adding that it was inevitable to sustain the industry and workers. With regard to the insinuation as to the non-procurement of raw cashew nuts through the State Trading Corporation, it is stated that adequate funds were not available with the Corporation to open an ''LC'' (Letter of Credit) and that 2.5 % commission had to be paid within ''90'' days, for which there was no source. In response to the alleged lack of advertisement/publicity, same is the ''ground'' as putforth by the learned Counsel for the third respondent, reiterating that there was no sufficient money. The prayer for the CBI investigation is sought to be resisted by placing reliance on the decision rendered by the Apex Court in Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, AIR 2002 SC 2225 : (2002) CriLJ 2942 : (2002) 1 JT 286 Supp : (2002) 4 SCALE 455 : (2002) 5 SCC 521 : (2002) 2 SCT 1090 : (2002) AIRSCW 2333 : (2002) 4 Supreme 91 (paragraph 6 and 7), State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, AIR 2010 SC 1476 : (2010) 2 JT 352 : (2010) 2 SCALE 467 : (2010) 3 SCC 571 : (2010) 3 SCR 979 : (2010) 2 UJ 1047 (paragraph 7) and in Disha Vs. State of Gujarat and Others, AIR 2011 SC 3168 : (2011) 3 JCC 2138 : (2011) 7 JT 548 : (2011) 3 RCR(Criminal) 694 : (2011) 7 SCALE 736 : (2011) AIRSCW 4993 : (2011) 5 Supreme 562 (paragraphs 16 and 19).

17. Mr. T.B. Pradeep, the learned Counsel for the petitioners in I.A. 4282 of 2015 seeking to implead them in the party array, submitted that there is no specific finding by the Special/Expert Committee as to any money laundering or fraud and it only says that no prudent action was there. Mr. C. Unnikrishnan, the learned Standing Counsel for the first respondent Corporation referred to the various diversified activities being pursued by the Corporation, introducing several ''value added products'' and the high brand value/demand for the same, however lamenting on the inadequacy of sufficient working capital. Mr. P. Chandrasekhara Pillai, the learned Standing Counsel for the CBI submits that the documents on record refer to the wide range of activities including ''High Sea Sale''. The Government itself has now decided to conduct a ''Vigilance Enquiry'', as put forth by the learned Advocate General and as such, the point to be considered is whether it can be effectively done by the Vigilance Department. The learned Standing Counsel submits that it may be beyond the reach of the Vigilance Department and that the CBI is ready to enshoulder the investigation.

18. Heard Mr. Sudhi Vasudevan, the learned Counsel for the petitioner in reply as well, who pointed out that the attempt of the Management and Trade Unions of

the first respondent is only to shield/defend the corruption, with reference to labour and the alleged attempt to provide more work/working days. The figures given in Annexure I unlike the figures in Annexure II (pertaining to another institution by name CAPEX) do not mention anything with regard to the average number of workers in the total units. The workers mentioned are in respect of a particular unit and that the exposed data is quite misleading. The learned Counsel submits that no objection has been filed by the respondents 2 and 3 with regard to the findings of the Special/Expert Committee in their report adding that the findings are quite categoric, to the effect that the acts and deeds involve various offences, to be investigated by the competent authority, who can only be the CBI. The dilly-dallying attitude of the Government, initially rejecting vigilance enquiry sought for by the Finance Department and confining it to the steps to be taken by the Industries Department; and now after filing report by the Special/Expert Committee, proposing some improvisation measures, only reflects the inconsistent stand. The decision now taken by the Government, to conduct ''Vigilance Enquiry'', is cited as an instance of belated wisdom to get rid of the CBI investigation, somehow or the other.

19. With regard to the question of ''locus standi'' of the petitioner, it is the specific case of the petitioner that the attempt made by him is only as a responsible citizen having social commitment. It is stated that he was a former office bearer of the Trade Union representing the workers of the first respondent Corporation and that he has got every right and interest to project the cause and ensure that the first respondent Corporation keeps its proper track, lest the purpose of creation of the Corporation itself should be defeated. It is also pointed out that absolutely no personal interest is involved and no such instance is pointed out. The learned Counsel for the petitioner asserts that the allegations in Ext. P9 were never made by the petitioner; but were forming part of the complaint preferred by somebody else and as such, the observation therein cannot place any hurdle with regard to the case projected by the petitioner with reference to the incriminating circumstances unearthed by the C & AG in the course of audit; the materials/data/inference drawn by the authorities of the Finance Wing of the Government and also by the RIAB.

20. It has been held by the Apex Court in Vishwanath Chaturvedi Vs. Union of India (UOI) and Others, (2007) 4 JT 144 : (2007) 3 SCALE 714 : (2007) 4 SCC 380 : (2007) 4 SCR 448 : (2007) AIRSCW 6406 : (2007) 8 Supreme 309 that, the party who has launched the Public Interest Litigation is a political opponent by itself is not a reason to shut out the enquiry at the threshold. It has also been made clear by the Apex Court that the ultimate test for maintainability of public interest writ petition praying for a CBI investigation is, whether the allegations have any substance. Applying the said test to the present case, it is evident from the various reports of the C&AG (Exts. P2 to P4), the reports and the recommendations of the Finance Wing of the Government (Exts. P5 to P7), the report submitted by the 10th respondent/RIAB (Ext. P8) and ultimately the report dated 23.05.2015 of the Special/Expert Committee appointed by the

Government pursuant to Ext. R8(a)G.O., that there exists adequate substance/ materials setting field/foundation forming the basis for the allegations, which in turn have to be enquired into. If a proper investigation is done, the actual position will be brought to light and if the allegations are substantiated, it may involve various offences, which in turn have to be proceeded against. Since the deals of the 1st respondent Corporation are not confined to the boundaries of the State and since it stretches across the border and even beyond the frontiers of the nation, involving procurement of raw cashew nuts from abroad, particularly African countries and such other sources, also involving ''High Sea Sales'' agreement executed between the first respondent and the suppliers, it cannot be effectively enquired into by the Vigilance Department of the State. This task, on the other hand, can be effectively handled, if the investigation is entrusted with the CBI.

21. The sanctity of the reports of the C&AG, a constitutional authority, is highlighted by the Supreme Court in the decision in State of Kerala and Others Vs. B. Surendra Das Etc., AIR 2014 SC 2762 : (2014) AIRSCW 3968 : (2014) 3 SCALE 421 . No material has been brough out from the part of the respondents 1 to 3 or anybody else, so as to draw any adverse inference with regard to various reports of the authorities of the Government at the highest level, such as Exts. P5 to P7; that of the RIAB-Ext. P8 and the report of the Special/Expert Committee appointed by the Government to Ext. R8(a) G.O. The decision rendered by the Supreme Court in Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, AIR 2002 SC 2225 : (2002) CriLJ 2942 : (2002) 1 JT 286 Supp : (2002) 4 SCALE 455 : (2002) 5 SCC 521 : (2002) 2 SCT 1090 : (2002) AIRSCW 2333 : (2002) 4 Supreme 91 cited by the learned Counsel for the third respondent does not moot any proposition to deny the relief as to the investigation by the CBI. In the said case, the verdict passed by the High Court ordering CBI investigation was set aside for the reason that the High Court had not reached a conclusion on the basis of the pleadings and materials on record, that a ''prima facie case'' was made out. It was accordingly, that the matter was remanded for fresh consideration by the High Court. Coming to the case in hand, the insinuating circumstances are very much evident from the materials on record and this Court has already arrived at a finding that there is substance in the allegations and if they turn to be established, it will definitely involve various offences, which are to be proceeded against.

22. Almost similar is the outcome with regard to the case reported in Disha Vs. State of Gujarat and Others, AIR 2011 SC 3168 : (2011) 3 JCC 2138 : (2011) 7 JT 548 : (2011) 3 RCR(Criminal) 694 : (2011) 7 SCALE 736 : (2011) AIRSCW 4993 : (2011) 5 Supreme 562 cited by the learned Counsel for the third respondent. The factual position considered by the Supreme Court in the said case stands entirely on a different footing. The petitioner before the Supreme Court herself was the accused, who had allegedly collected huge amounts of Rs. 62 crores from innocent persons giving them false assurance that their amount

would have a high premium. It was also observed that, it had not been alleged in the petition that any of the investors was very powerful or capable to manage the investigation against the petitioner or that the case of suicide of her husband was not properly investigated; nor was it anybody''s case that the police had unnecessarily harassed the petitioner. The Apex Court observed that the petition was based on mere apprehension by the petitioner and none of the grounds taken by the petitioner was tenable.

23. After hearing both the sides, this Court finds that the necessity to conduct a detailed investigation has been felt by the Government itself; who in turn, has ordered a ''Vigilance Enquiry'', as submitted by the learned Advocate General during the course of arguments. Whether this is sufficient, or will it be a proper substitute for ''CBI investigation'' in view of the wide range of activities and transactions involved; is the point to be considered. It has also to be looked into, whether the insinuation made will ''prima facie'' involve any offence to be investigated and whether it is a fit case to have the matter entrusted with the CBI. So as to analyse the facts and figures, a peep into the factual data unearthed by the different authorities, at different levels and their recommendations is necessary. The authorities who conducted the enquiry/ inspection are mainly four in number;

"(1) by the Comptroller and Auditor General - 9th respondent - vide Ext. P2 to P4 reports.

(2) by the Finance Wing of the Government at the level of Secretary -7th respondent - vide Exts. P5, P6 and P7

(3) by the 10th respondent - Public Sector Reconstructing and Internal Audit Board (RIAB) vide Ext. P8

(4) by the special committee/expert committee appointed by the Government - vide report dated 23.05.2015 - pursuant to Exts. R8(a) Government Order dated 25.04.2014"

24. After threadbare analysis of the facts and figures, in the audit by the C & AG, analysing all the 22 tenders and 46 purchase agreements from 2008-''09 to 2012-''13, 10th respondent/Comptroller and Auditor General has summed up in Ext. P4 report that the purchases were made disregarding the COPU (Committee of Public Undertakings) and EC (Expert Committee) recommendations, involving the following salient features :

"? Excessive dependence on a local trader for procurement (4.1.3.1 of the audit findings)

? Unauthorised diversion of grants and furnishing incorrect utilization certificates (4.1.3.2 of the audit findings)

? purchase of inferior quality Kerala RCN through traders (4.1.3.3 of the audit findings)

? Deficiencies in the purchase process of African Raw Cashew Nuts (4.1.3.4 of the audit findings)

? Serious deficiencies in Tendering, including inadequate publicity (4.1.3.5 of the audit findings)

? Deficiencies in the contract terms and conditions (4.1.3.6 of the audit findings)

? Irregularities in award of contract (4.1.3.7 of the audit findings)

? Payment of ineligible clearing and forwarding charges (4.1.3.8 of the audit findings)

? Impact of the deficiencies in the procurement of cashew nuts (4.1.3.9 of the audit findings)

? Inadequate follow up action on inquiry reports (4.1.3.10 of the audit findings)

? Violation of the COPU and EC recommendations (4.1.3.11 of the audit findings)"

25. After the enquiry conducted by the Finance Inspection Wing (NTG) of the Government, regarding the alleged malpractices in connection with the purchase and sale of cashew nuts, Ext. P5 enquiry report was submitted [English translation of which is given by the petitioner as Ext. P5(a)], which contains the following recommendations.

"Recommendations

1. To conduct a detailed investigations regarding the purchase of raw cashew nuts and sale of cashew kernels besides the market value of cashew kernels/raw cashew nuts and such other matters during preceding years with the aid of Govt. Agency

2. To ensure observance of the tender procedures, maintain tender registers/ tender schedules showing the details of the tenders received and accepted with the certification of the officer concerned.

3. The tender form submitted on 6.1.2011 by JMJ Traders did not reflect important details like the origin of raw cashew nuts, quality, price, out turn, count etc. The administrative department has to conduct a detailed investigation on the irregularity in the acceptance of incomplete tender form submitted by JMJ traders.

4. Action should be taken to give a satisfactory reply to the existing paragraphs of Accountant General.

5. The information regarding the use of fuel should be recorded in the log book at the end of every month and same should be attested by higher official concerned. The fuel efficiency certificate must be attached to the log book. The official concerned must take care of the above said matters and may give direction to keep log book properly and to ensure that the vehicles are not

misused.

6. In any event resorting to local purchase after inviting tenders for the import of raw cashew nut is opposed to store purchase manual. Explanation has to b sought from the MD.

7. Most of the transaction of the corporation were with JMJ Traders. To avoid this over dependency with the said establishment administrative department should frame guidelines in the purchase rules regarding purchase of raw cashew nuts."

26. Ext. P6 report of the inspection conducted in the first respondent Corporation in respect of three financial years; 2009-''10 to 2011-''12; refers to various incriminating circumstances/instances. The significant observations made by the Additional Secretary (Finance)/Government of Kerala, vide Ext. P6, are in the following terms :

"OBSERVATION :--

(1) The funds sanctioned for the purpose of construction/renovation/ modernization activity is not fully utilized. Out of the total amount of Rs. 33,95,86,000/- sanctioned under this head, only a meager amount of Rs. 9,73,27,708/- was utilized leaving a huge balance of Rs. 24,22,58,292/-.

(2) For the rejuvenation activity, out of the total sanctioned amount of Rs. 96,40,00,000/-, an amount of Rs. 89,68,23,236/- was utilized and the unspent balance in this head is Rs. 6,71,76,764/-.

(3) Instead of total unutilised fund balance of Rs. 30,94,35,056/-, only an amount of Rs. 2,18,30,256/- is available in various bank accounts. It means Government budgetary allocation has been diverted to other purpose.

(4) Audit of accounts was done only upto the year 2006-07 and auditing is pending for the last five financial years. But provisional accounts are prepared upto the year 2011-12.

(5) As per the provisional balance sheet figures, it is observed that the company is in grave losses and made loss for the last five financial years continuously."

27. The Finance Wing (NTG) of the Government of Kerala, based on a complaint regarding the malpractices of ''e-tender'' in the purchase of raw cashew nuts and sale of cashew kernels by the first respondent Corporation, has submitted Ext. P7 report. Different instances and consequences resulted have been dealt with in detail and the recommendations made by the Addl. Chief Secretary (Finance) vide Ext. P7 are as given below :

"Recommendations :

1) Governing department has to take immediate steps to remove Sri. Ratheesh from the post of Managing Director due to the several irregular actions referred to above and on the ground that he has violated the provisions of store purchase manual while purchasing raw cashew nuts, and also on the ground that he

supported the unauthorized receipt of huge amount from certain companies for the purpose selling cashew kernels at a low rate.

2) In E-tender held for the purchase of imported "Ginibisavo raw cashew nuts" JMJ traders alone has participated. The store purchase provides for re-tender when only one company submitted tender. But in violation of this rule the Chairman and Managing Director negotiated within the sole company which submitted the tender and confirmed it and thereafter the other nine members ratified and subscribed their signatures. This itself is a serious irregularity and in violation of the existing guidelines and rules. The Governing Department is to view this irregularities very seriously and necessary action is to be taken against all the 9 board members.

3) Tender register was not inspected by the Managing Director or higher official of the corporation at least once. In the said register, page certificate was not marked. It is mandatory to mark page certificate and managing director has to verify and certify all entries. The corporation has to constitute a tender committee to invite global tender while importing raw cashew nuts.

4) The corporation printed profit-loss accounts up to finance year 2008 - 2009. As such as per the direction of C & AG Profit - loss accounts from 2009 - 10 to 2012 - 13 are to be completed in a time bound manner and intimated and further financial aid to the corporation shall be sanctioned only on that basis. The profit-loss accounts for the said period is to be completed in a time bound manner and intimated urgently to finance department.

5) Immediate disciplinary proceedings is to be taken against the liaison officer Sri. R. Rajeev, Assistant Personnel Manager Sri. A. Gopakumar, Sri. A. Sudheer of Personnel Department and Office Attender Sri. Sunil who tried to obstruct the inspection of Finance Inspection Wing, which empowered by Government to check financial malpractices in Govt. Institutions and Govt. departments. The information regarding the disciplinary action taken must be intimated to finance department.

6) M/s. Cee Bee Commodities company entered into agreement to purchase Ivory Coast raw cashew nuts on the basis of tender held on 26.04.2013. But the consideration for the purchase of raw cashew nuts was paid to Asia Commodities which had not even participated in the tender. It was a serious lapse on the part of corporation in paying to a company that has not participated in tender. This resulted in the tax evasion by the companies. Hence Governing department shall cause inspection of the tax returns of companies dealing with corporation by the Commercial Tax Department and the further proceedings taken is to be intimated to finance department forthwith.

7) Necessary action should be taken against the nine board members who without participating in the negotiation, managed to put their signature subsequently to make it appear that they had participated and approved the decision of the Chairman and the Managing Director referred to in paragraph 6 of

(i)(a) and (b). Necessary action taken must be intimated to Governing Department.

28. The allegations in respect of the affairs of the first respondent Corporation were enquired into by the RIAB (Public Sector Reconstructing and Internal Audit Board of the Department of Industries and Commerce Government of Kerala) - 10th respondent, who submitted Ext. P8 report. The alleged clandestine deals pursued by the first respondent Corporation and the undue benefits extended to a particular establishment by name ''JMJ traders'' and the High Sea Sale agreements executed between the first respondent and M/s. JMJ Traders (who in turn had approached another dealer to facilitate the High Sea Sale); reduction of the quality and escalation of the cost price, resulting in huge loss etc. are discussed in detail in the said report. With regard to the raw cashew nuts purchases made from ''JMJ traders'' in respect of various years, the figures given are extracted below:

"Purchases from M/s. JMJ Traders:--

With reference to the said figures, it has been stated by the Secretary - RIAB, that there was a ''near monopoly situation'' in supply of cashew nuts to the first respondent Corporation, through the identified supplier ''M/s. JMJ traders'', having their office at Kottayam. After discussing the various incriminating circumstances point by point, the 10th respondent - RIAB states in paragraph 15 as follows :

"15. .... It is surprising to note that KSCDC is unaware of the quality certificate at the Port of Discharge which clearly figures in the Bill of M/s. Sai Commodities in the above illustration. The Commercial Manager of KSCDC states that the documents are with M/s. JMJ Traders. There are ample opportunities of mixing Raw Cashew Nuts with varying quality. KSCDC Management could be fully aware of this. KSCDC Management had deleted the earlier clause of inspection at the Port of discharge. This was later changed to inspection at factory presumably after clearance of goods by the supplier. The methodology adopted and the procedures are not at all prudent as the final buyer is KSCDC. This was not noted by the KSCDC Board. A tenure of not more than five years is to be fixed for a Director and professionals will have to be nominated."

In Paragraph 18, the 10th respondent - RIAB has pointed out the necessity to remove the present Managing Director/second respondent from the present position, to ensure that all records are made available to the Investigating Agency to bring out the facts in greater detail. The recommendation in paragraph 18 is reproduced below, for convenience of reference :

"18. The Government may keep the present Managing Director out from the present position to ensure that all records are made available to the investigating agency to bring out the facts in greater detail and to estimate the losses incurred on account of multiple paper purchases, poor quality of nuts and low material productivity. The services of all retired officers may be terminated urgently. Batch wise analysis of output in various factories and the selling prices prevailing for each variety of cashew nuts at the respective period has to be analysed. Transactions in sales side will also have to be analysed in detail by an investigating agency within a given time frame.

29. With regard to the course and events pointed out, the Department of Vigilance and Anti Corruption Bureau (DVACB) had already recommended a detailed ''Vigilance Enquiry'' to unearth the illegal practices existing within the first respondent Corporation. This is recorded in Ext. P11(d) ''file note'' produced by the petitioner, which contains the subsequent endorsements as well. The request made by the DVACB to conduct a ''Vigilance Enquiry'' was noted on 15.04.2013. In this file, the Under Secretary (by name Madhu) has written as ''paragraph 7'', doubting whether the ''vigilance enquiry'' as recommended by DVACB was necessary and he suggested [at the portion marked as ''X''] that a copy of the letter of the DVACB and its enclosures may be forwarded to the Industries Department and "that Department" may be directed to consider the matter and take appropriate action. This endorsement on 17.10.2014 has been dissented by the Additional Secretary to the Government, Vigilance Department (by name Somarajan) on 20.04.2013 and put up a note at ''paragraph 8'', that ''Vigilance Enquiry'' as requested by the DVACB may be ordered. This was affirmed by the Principal Secretary (Home and Vigilance Department) as per the endorsement made on 22/04/2013 at ''paragraph 10''. It is seen from the proceedings [Annexure 11(d) proceedings, the correctness or authenticity of which is not disputed by any of the respondents) that the Honourable Minister, however ordered to pursue the action as suggested by the Under Secretary at the portion marked ''X'' i.e. to forward the proceedings to the Industries Department for action at their side. After considering the contents of the reports as mentioned above, this Court is of the view that, if the insinuating circumstances are established, it may involve various offences and the matter may have to be proceeded further in accordance with law.

30. Now, let us come to the report dt. 23.05.2013 submitted by Expert/Special Committee appointed, pursuant to the Government Order dated 25.04.2014, vide Ext. R8(a). It has to be immediately pointed out, that the propriety in having submitted two separate reports by the 7th respondent before this Court, marking the same as ''strictly confidential'' was questioned and disputed by the concerned party respondents. The first cover was opened and copies were served to all the parties, as per the interim order dated 09.04.2015. The second cover was not opened and it is kept in tact in the Registry. In view of the contents of the other materials on record, particularly; Exts. P2 to P4 reports of the C & AG; Ext. P5 to P7 reports of the Finance Secretary; Ext. P8 report of the RIAB and also the present report of the Expert/Special Committee appointed by the Government, pursuant to Ext. R8(a) Government Order, we do not find it necessary to go through the contents of the confidential reports submitted by the 7th respondent directly to this Court or to rely upon any of its contents. Had they

been filed by the 7th respondent through proper channel, along with an affidavit, this Court would have looked into it and since such course was not pursued, we decline to refer to the same. It is in the said circumstances that the discussion is confined only to the other reports as mentioned above and as it stands so, no prejudice has been caused to any of the contesting respondents.

31. The Special/Expert Committee appointed by the Government as per Ext. R8(a) G.O. Dated 25.07.2014 considered the various aspects as to the procurement of raw cashew nuts, sales of cashew kernel and various other incidental aspects. The terms of reference as per Ext. R8(a) G.O. are as given below:

"Terms of reference for the Expert Committee:

1. All aspects regarding the purchase of raw cashew nuts including allegations regarding purchase from single tenderer, purchase at a higher rate etc. for the last 5 years in respect of KSCDC.

2. All aspects regarding the sale of cashew products including allegations regarding sale of products at lower price for the last 5 years in respect of KSCDC.

3. All aspects regarding the purchase and sale of cashew nuts by CAPEX for the last 5 years.

4. Suggestions for enhancing efficiency through mechanization and reducing labour cost in KSCDC and CAPEX.

5. To examine whether option of purchase of raw cashew nuts through State Trading Corporation is viable for KSCDC and CAPEX.

6. Suggestion to run KSCDC and CAPEX profitably.

7. Ways to raise funds other than Government funds for KSCDC and CAPEX.

8. Suggestion to improve the working conditions of labourers of KSCDC and CAPEX."

32. After analysis of the facts and figures, the Special Committee arrived at the findings and recommendations as given in Chapter 9. The findings of the said Committee are extracted below for easy consideration and appreciation:

FINDINGS:

"9.1. Both KSDC and CAPEX are not at all concerned with the commercial objectives of running the business but are over concerned with providing maximum number of working days. It is a fact that increase in production invariably leads to increased losses as the cost of production always far exceeds the sales. Cash losses are being funded by Government, in the form of working capital loan. There has not been any effort by KSCDC and CAPEX to reduce the loss by way of mechanization, multi- tasking and optimum utilization of labour. The committee strongly feels that unless stringent measures are adopted by the

Government to set right the present situation there is no scope for these organizations to continue.

9.2 There is no consistency between number of days worked and production. The losses increase with increase in production, number of working days and turnover.

9.3 Committee has perused the minutes of quite a large number of BOD meetings and found that the BOD has not discussed about the losses, low productivity, competitive purchase or competitive sales. Generally the matters discussed are negotiation with RCN bidders and employee matters.

9.4 The committee has not found any records from the Government directing the Corporation to increase the number of working days. '' Freedom with responsibility'' granted by Government through a G.O. have been construed by the organizations in the following manner ''FREEDOM'' as freedom to purchase and sell without following any commercially prudent norms. ''RESPONSIBILITY'' as providing maximum number of working days without considering of efficiency, productivity, or any financial prudence. There is a feeling that the '' Akshayapathra'' of Government will come to their rescue.

9.5 Both KSCDC and CAPEX continue to incur substantial losses even though Government gives financial support to the extent of 50 to 60% of the employee costs.

9.6 There is no planned procurement of RCN and sale of products. The ad-hoc way of purchase and sale has a very adverse impact on the financials of the organizations.

9.7 There is no system of internal control, concurrent audit, cost estimation and accounting manual in the organizations.

9.8 The budgetary support from Government earmarked for mechanization and rejuvenation had been diverted and utilized for working capital purposes, with or without Government permission.

9.9 All available funds were utilized to provide maximum number of working days without settling the dues to suppliers or giving the statutory benefits of workers. It appears that the company is bothered only about the workers on the roll, behaving almost in an inhuman manner to the retired workers. The committee observed that gratuity dues alone are over Rs. 55 crore now. Besides there are dues to the tune of Rs. 10 crore towards P.F. and ESI

9.10 The contract terms of delivery and payment are not adhered to and fresh purchase contracts are entered into with the same party before concluding the previous contract. As payments are not settled against each purchase contract promptly, the corporation is not in a position to negotiate for competitive prices

9.11 KSCDC had given extension in the period of supply of RCN and entered into additional contract at the same price of RCN of a particular origin. In a highly volatile and fluctuating market, this practice is not at all advisable as the price might be much lesser for the particular origin as the season progresses.

9.12 There are many instances of short supply. The corporation has not taken any legal action against the defaulting suppliers.

9.13 The business with M/s. JMJ Traders has not been on commercially prudent terms. The committee found that, in many tenders though M/s. JMJ Traders were not the lowest bidder, they came lowest after negotiations. As about 80% of total quantity purchased during the five year period under study has gone to M/s. JMJ Traders, the committee cannot rule out the existence of a cartel.

9.14 It was also found that M/s. JMJ Traders was given undue extension in supply period on several occasions. In many cases, M/s. JMJ Traders have supplied much higher quantities than contracted, at the same rate, even though the terms of contract permit a variation of only +/-10%. This was done by entering into another contract based on the same tender, instead of going for a fresh tender. Such an action denies the right of other suppliers to take part in a fresh tender.

9.15 There are instances where KSCDC had purchased from a single bidder

9.16 There are instances where instead of calling off the original tender and inviting a tender afresh, the Corporation has finalized the tender after one month of the tender.

9.17 Even though the contracts in purchase of RCN mention 90% payment at the time of delivery, in almost all cases, this has not been followed, obviously due to fund shortage. In the case of KSCDC, as the supply is almost from the single party, such continuous outstanding towards him have made the Corporation more vulnerable, both in terms of procurement price and enforcement of contract terms.

9.18 Both KSDC and CAPEX follow the practice of collecting advances from buyers at the time of entering into the contract for sale. No formal sales contract with delivery schedule is entered in to by both the organizations. As delivery is erratic and too much delayed, the organizations might be selling products at prices which have no relation with prevailing market. There is also a possibility that sales orders with prior dates are being entered in to at a later date with obvious price advantage to the buyer.

9.19 There are many instances where the contracted quantity was not fully delivered prior to entering into next contact.

9.20 The Committee finds that in the local market, KSCDC and CAPEX have very high brand value and their products are of high quality probably because of the skill of workers. However, the products are sold loose giving a chance to the buyers to mix with their products. This is done irrespective of the availability of packaging facility with dedicated monthly paid staff. Sale of packaged kernels would have fetched much higher prices due to high quality and brand.

9.21 In certain cases different contracts have been clubbed together. Part of the contracted products to one party was seen supplied to another party on the same terms and conditions of the original contract. The period of supply is never seen mentioned in any contracts. Also, excess quantities were seen supplied over and above the contracted quantity, and the Corporation took more than 6 months to complete the contracted supply.

9.22 Even though, investments have been made to produce value added products with sufficient number of dedicated employees, quantity produced and sold is very meagre. It may also be noted that the Government has given grant for brand promotion."

33. However, the recommendations deal only with the financial, purchase, sales, labour and productivity aspects. The opening paragraph, under the head ''Recommendations'' is extracted below:

"9.2. Recommendations

As explained in the foregoing chapters, both KSCDC and CAPEX have been making huge losses continuously; there is a need to relook the working model urgently. The cashew public sector is being politically construed as a labour welfare measure and not as a commercial entity. Such a thinking was probably apt in the 1970s, 80s and 90s as the number of workers involved was very high. The numbers in public sector has now come down to around 16000 from a high of over 50000 in the 1980s. The new generation work force have no attraction to the sector and due to short supply, the private companies are mechanizing heavily and engaging migrant workers. In such a scenario long term prospects of both KSCDC and CAPEX are extremely grim. Hence the Committee intends to make only short and medium term recommendations regarding financial, purchase, sales and labour and productivity aspects."

From the above, it is seen that even though clear findings were rendered with regard to various deeds and misdeeds done by the concerned persons, who were at the helm of the affairs of the first respondent Corporation, in violation of the relevant norms/guidelines/instructions causing huge loss, the Committee made ''recommendations'' only with reference to the fields of finance, purchase, sales and labour and productivity and that alone. In other words, nothing was said with regard to the course of action to be pursued with reference to the mischief/ malpractices already committed. The recommendation of the Committee virtually amounts to "remedial measures" to be taken, to bring back normalcy and to scale down the mounting loss. But there is no solution with regard to the undesirable activities already pursued in violation of the norms/guidelines/ instructions with regard to procurement of raw cashew nuts and sale of cashew kernels and such other incidental aspects. Since a ''finding'' has been reached by the Special/Expert Committee as to the course pursued by the concerned respondents, that too, identifying a particular organisation by name ''JMJ Traders'' for perpetuating the mischief and although the lapses on the part of the parties concerned were asserted holding that the Committee cannot rule out the existence of cartel with the "JMJ Traders", from whom 80% of the total purchase was effected during the past five years (paragraph 9.13), the Committee chose to maintain silence when it came to the ''recommendations'' in this regard. There is also a mention in paragraph 9.18 of the report that, there is a possibility that sales orders with ''prior dates'' were being entered into, on a later date, with obvious price advantage to the buyer and there were many instances where the contracted quantity was not fully delivered prior to entering into next contract. The Committee has however found it extremely essential to have the Board reconstituted, removing the second respondent/Managing Director as a prerequisite for effective implementation of the recommendations. The concluding paragraph of the said report, signed by the Chairman, Members and the Convenor of the Committee, is in the following terms:

"The Committee is of the firm opinion that reconstitution of the Board and removal of the Managing Director is a prerequisite for the effective implementation of the above recommendations, and it recommends so."

Considering the entire facts and circumstances, this Court finds that the incriminating circumstances pointed out require to be investigated effectively, as the same would involve offences under different provisions of law, if it comes to substantiated.

34. Though the report of the Special/Expert Committee does not mention the necessity to have a ''Vigilance Enquiry'', it was submitted by the learned Advocate General before the Court at the time of hearing, that the Government had already accepted the report and that the Government has ordered a ''Vigilance Enquiry'' into the matter. No respondent has filed any objection to the Special/Expert Committee''s report. If the Committee report has already been accepted by the Government, the re-constitution of the Board and removal of the Managing Director(2nd respondent), stated as a prerequisite for effective implementation of the recommendation forming part of the report, is a matter for the Government, to have it implemented, if the sense of commitment is proper, transparent and above board. We leave it there.

35. Coming to the question of proper investigating agency, the point to be considered is whether it will lie in the mouth of the Vigilance Department of the State, by virtue of the complex nature of the transactions involving procurement of raw cashew nuts from different parts of the world, also involving ''High Sea Sales''. It is also seen that the Department of Vigilance and Anti Corruption Bureau had earlier requested for a detailed vigilance investigation with reference to the facts and figures. As evident from the ''Note'' file at Ext. P11(d), it was not sanctioned, based on the doubt expressed by the "Under Secretary to the Government" on 17.04.2013. Even though the file notings of the Under Secretary were dissented and disagreed by the Additional Secretary to the Vigilance Department on 20.04.2013 insisting for Vigilance Investigation, which in turn was affirmed by the Principal Secretary, Home and Vigilance Department on 22.04.2013; the doors of the truth were caused to be shut by observing that

matter did not require any vigilance enquiry and that the file could be forwarded to the Industries Department where appropriate action could be pursued. It was only after filing the writ petition, referring to the callous inaction on the part of the Government in dealing with the matter, despite the report of the C&AG and the direction given by this Court as per Ext. P10 judgment, that the Government chose to appoint a Special/Expert Committee who submitted the report on 23.05.2015. The report submitted by the Special/Expert Committee itself is adequate enough to hold that a threadbare investigation is extremely essential to bring out the hidden facts and to book the culprits. The nature of investigation has to be on a wider circle, and collection of materials from parties/ establishments/witnesses beyond the State and even from abroad may be necessary, which task cannot be effectively satisfied by the Vigilance Department of the State. We find this as a ''fit case'' to be entrusted with the Central Investigating agency/CBI; more so, when the circumstances pointed out by the Apex Court in this regard stand satisfied.

36. In the above facts and circumstances, we direct the 4th respondent/State of Kerala to entrust the investigation into the affairs forming the subject matter of Exts. P2 to P4 reports of the C&AG, Exts. P5 to P7 reports of the Finance Wing of the Government of Kerala, Ext. P8 report of the RIAB and the report dated 23.05.2015 of the Special/Expert Committee constituted by the Government pursuant to Ext. R8(a) G.O. dated 25.07.2014 at the earliest at any rate within ''two weeks'' from the date of receipt of a copy of the judgment. The CBI shall take over the investigation in respect of the instances specified above and other incidental matters, if any, complete the investigation most effectively and pursue further steps to bring the guilty to the dock, so as to uphold the rule of law.

The writ petition stands allowed.

