

(2015) 07 KL CK 0129

In the High Court Of Kerala

Case No : I.A. No. 9769 of 2015 and W.P. (C) No. 18666 of 2015

Kerala State Council for Science Technology and Environment

APPELLANT

Vs

C. Thangaraj and Others

RESPONDENT

Date of Decision : 14-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 141, 45
Constitution of India, 1950 — Article 139, 226, 227, 32

Citation : (2015) 4 KHC 160

Hon'ble Judges : Anil K. Narendran, J

Bench : Single Bench

Advocate : George Zacharia, Standing Counsel, for the Appellant; Elvin Peter P.J., T.G. Sunil and K.R. Ganesh, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Anil K. Narendran, J—This is an application filed by the Kerala State Council for Science, Technology and Environment (3rd respondent in WP (C) No. 18666 of 2015) praying that, the question of maintainability of the writ petition may be heard as a preliminary issue. The writ petitioner (1st respondent in this IA) is an aspirant for appointment to the post of Executive Director in the Centre for Water Resources Development and Management, Kozhikode (CWRDM), one of the research and development institution under the Kerala State Council for Science, Technology and Environment (KSCSTE) which is an autonomous body under the Government of Kerala. The reliefs sought for in the writ petition read thus;

"(i) To issue a writ of certiorari or any other appropriate writ, order or direction, calling for the records leading to Ext. P8 and to quash the same;

(ii) To issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to appoint the petitioner to the post of Executive Director in CWRDM forthwith;

(iii) To issue an injunction against the respondents restraining them from taking

any steps to notify the vacancy of the post of Executive Director of CWRDM and to proceed further in the matter of appointment to the post of Executive Director of CWRDM."

2. On the question of maintainability of the writ petition, the arguments advanced by the learned Standing Counsel for the KSCSTE are as follows;

"(i) The first relief sought for in the writ petition, namely, a writ of certiorari to quash Ext. P8 order dated 14/05/2015 passed by the KSCSTE is not maintainable- since what is sought to be quashed is the action taken in compliance with the directions issued by this Court in Ext. P7 judgment in the previous writ petition filed by the writ petitioner, i.e., WP (C) No. 24214 of 2013;

(ii) The second relief sought for in the writ petition, namely, a writ of mandamus directing the respondents to appoint the writ petitioner to the post of Executive Director in CWRDM is not maintainable since the writ petitioner has sought a similar relief in the previous writ petition i.e., WP (C) No. 24214 of 2013, based on the same set of facts, which has already been considered in Ext. P7 judgment;

(iii) The third relief sought for in the writ petition, namely, an order of injunction restraining the respondents from taking any steps to notify the vacancy of the post of. Executive Director of CWRDM and to proceed further in the matter of appointment to that post, and also the first relief sought for, namely, a writ of certiorari to quash Ext. P8 order, have become infructuous since Ext. R3(a) fresh notification dated 22/06/2015 for appointment to that post has already been published by the KSCSTE. As such the first and second reliefs are not maintainable any longer;

(iv) Though, in paragraph 7 of the writ petition, the writ petitioner has disclosed the filing of the previous writ petition and produced Ext. P7 judgment of this Court in WP (C) No. 24214 of 2013, the affidavit accompanying the writ petition contains a false statement that, he has not filed any petition before this Court seeking similar or identical reliefs on the same subject-matter."

3. I heard arguments of the learned Standing Counsel for the KSCSTE, who argued at length on the question of maintainability of the writ petition. I have also heard arguments of the learned counsel for the writ petitioner and also the learned Government Pleader representing the State.

4. Regarding the first relief, the learned Standing Counsel would contend that, a writ of certiorari to quash Ext. P8 order is not maintainable since it is an action taken by the KSCSTE in compliance with the directions issued by this Court in Ext. P7 judgment in WP (C) No. 24214 of 2013.

5. The recruitment to the post of Executive Director in CWRDM was the subject-matter in WP (C) No. 24214 of 2013 the previous writ petition filed by the writ petitioner. The said writ petition was originally filed seeking a writ of mandamus commanding respondents 1 to 4 therein to issue orders appointing the writ petitioner as the Executive Director of CWRDM based on the selection conducted

pursuant to Ext. P1 notification dated 01/12/2011 published by the KSCSTE. During the pendency of that writ petition by Ext. P4 Government Order dated 24/02/2014, the writ petitioner was informed that the Government intends to re-notify the post by cancelling the steps already taken pursuant to Ext. P1 notification. By way of an amendment Ext. P4 Government Order was challenged in WP (C) No. 24214 of 2013, seeking a writ of certiorari to quash the said order. In addition to that, the writ petitioner has also sought for a writ of mandamus commanding the State of Kerala to appoint him as the Executive Director of CWRDM on the basis of the selection conducted pursuant to Ext. P1, a relief similar to relief No. (ii) sought for in the present writ petition, i.e., WP (C) No. 18666 of 2015. By Ext. P7 judgment dated 19/02/2015, this Court disposed of WP (C) No. 24214 of 2013, by setting aside Ext. P4. Government order and directing the Executive Vice President of the KSCSTE (4th respondent in WP (C) No. 24214 of 2013) to take an independent decision for appointment, within a period of one month from the date of receipt of a copy of the judgment, in the light of the discussions contained therein. Paragraph 7 of the judgment reads thus;

"7. The post of Executive Director is a responsible post to be discharged by experienced persons. If there are any reason which make candidates unfit for the post, necessarily that must be transpired to justify the action nullifying the selection process. However, in this case in spite of many directions, the explanation arrived by the Government in cancelling the selection process is not borne out on record. The contention of the 4th respondent is that the requirement of at least three candidates as per the procedure for selection and appointment of Executive Director are unsustainable. The Selection Process Rules only contemplates that Search-cum-Selection Committee shall prepare a panel of not more than three candidates which shall be forwarded to the President by the Executive Vice President. That does not mean, there should be three candidates for consideration by the President for appointment. The only requirement is that the panel prepared by the Committee shall not exceed more than three candidates. The process of such selection committee is to find out best suitable candidates. Having found that petitioner is the best suitable candidate, petitioner's name has to be forwarded to the post. Of course, President is free to dissent with the findings of the Committee for any reason legally sustainable. However, based on mere representation by any Organisation or third party, the selection process cannot be unsettled. In view of the fact that no cogent reason has been stated to cancel the selection process, I am of the view, Ext. P4 is liable to be set aside. In view of the fact that President has to take independent decision for appointment, this Writ Petition is disposed of directing the President to take decision within a period of one month from the date of receipt of a copy of this judgment in the light of discussions as above."

6. A reading of Paragraph 7 of Ext. P7 judgment would make it explicitly clear that, this Court set aside Ext. P4 Government order in view of the fact that it contains no cogent reasons to cancel the selection process. This Court, after

noticing the fact that, the post of Executive Director is a responsible post to be discharged by an experienced person, observed that, if there is any reason which makes a candidate unfit for the post, necessarily that must be transpired to justify the action nullifying the selection process. This Court has also observed that, the President of the KSCSTE is free to dissent with the findings of the Selection Committee for any reasons legally sustainable. Therefore, the question as to whether the reasoning of Ext. P8 order issued by the KSCSTE is legally sustainable, or can it be sustained in the light of the observations contained in Paragraph 7 of Ext. P7 judgment, is open to challenge in a subsequent writ petition. Therefore, I find absolutely no merit in the argument" advanced by the learned Standing Counsel for the KSCSTE that, the challenge made in the present writ petition against Ext. P8 order cannot be entertained, since it is an action taken by the KSCSTE in compliance with the directions issued by this Court in Ext. P7 judgment.

7. Regarding the second relief, the learned Standing Counsel would contend that, a writ of mandamus commanding the respondents to appoint the writ petitioner to the post of Executive Director in CWRDM is not maintainable since he sought a similar relief in the previous writ petition i.e., WP (C) No. 24214 of 2013, based on the same set of facts, which has already been considered in Ext. P7 judgment. Therefore, relief No. (ii) is barred by the doctrine of res judicata. In order to buttress this contention, the learned Standing Counsel has relied on the judgment of the Apex Court in *Daryao and Others Vs. The State of U.P. and Others*, AIR 1961 SC 1457 : (1962) 1 SCR 574 .

8. Section 11 of the Code of Civil Procedure, 1908 lays down that, no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

9. In *Daryao's* case (supra), a Constitution Bench of the Apex Court has observed that, if the rule of res judicata itself embodies a principle of public policy which in turn is an essential part of the rule of law then the objection that the rule cannot be invoked where fundamental rights are in question may lose much of its validity. The rule of res judicata as indicated in Section 11 of the Code of Civil Procedure has no doubt some technical aspects, for instance the rule of constructive res judicata may be said to be technical; but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of the general rule of res judicata they cannot be treated as irrelevant or inadmissible even in dealing with

fundamental rights in petitions filed under Article 32.

10. As per Section 141 of the Code of Civil Procedure, the procedure provided in the Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction. But, going by the "Explanation" to Section 141 of the Code, inserted by Section 45 of the Code of Civil Procedure (Amendment) Act, 1976, the expression "proceedings" in Section 141 includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution. However, a three-Judge Bench of the Apex Court in *G.K. Dudani and Others Vs. S.D. Sharma and Others*, AIR 1986 SC 1455 : (1986) LabIC 1454 : (1986) 1 SCALE 1374 : (1986) 1 SCC 239 Supp : (1986) SCC 239 Supp : (1986) 2 SCR 250 has held that, although by reason of the Explanation which was inserted in Section 141 of the Code of Civil Procedure, 1908, by the Code of Civil Procedure (Amendment) Act, 1976, Section 11 of the Code does not in terms apply to any proceeding under Article 226 of the Constitution, the principle of *res judicata* does apply to all writ petitions under Article 226.

11. In *Saroja Vs. Chinnusamy (Dead) by L.Rs and Another*, AIR 2007 SC 3067 : (2007) 5 CTC 233 : (2007) 10 JT 441 : (2007) 10 SCALE 331 : (2007) 8 SCC 329 : (2007) 9 SCR 304 : (2007) AIRSCW 5543 . the Apex Court, after examining the provisions under Section 11 of the Code, has enumerated the essential conditions to be satisfied in order to constitute *res judicata*. Paragraph 4 of that judgment reads thus;

"4.After a careful reading of the provisions under Section 11 of the CPC, it is discernible that in order to constitute *res judicata*, the following conditions must be satisfied:

- (i) There must be two suits-one former suit and the other subsequent suit;
- (ii) The Court which decided the former suit must be competent to try the subsequent suit;
- (iii) The matter directly and substantially in issue must be the same either actually or constructively in both the suits.
- (iv) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in the former suit;
- (v) The parties to the suits or the parties under whom they or any of them claim must be the same in both the suits;
- (vi) The parties in both the suits must have litigated under the same title."

12. In *Daryao's case (supra)*, a decision relied on by the learned Standing Counsel for the KSCSTE, the Constitution Bench of the Apex Court has held that, if a judgment has been pronounced by a Court of competent jurisdiction it is binding between the parties unless it is reversed or modified by appeal, revision or other procedure prescribed by law. Therefore, if a judgment has been

pronounced by the High Court in a writ petition filed by a party rejecting his prayer for the issue of an appropriate writ on the ground either that he had no fundamental right as pleaded by him or there has been no contravention of the right proved or that the contravention is justified by the Constitution itself, it must remain binding between the parties unless it is attacked by adopting the procedure prescribed by the Constitution itself. The binding character of judgments pronounced by Courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis. The Apex Court has also held that, the general rule of *res judicata* can be invoked only in cases where a dispute between the parties has been referred to a Court of competent jurisdiction, there has been a contest between the parties before the Court, a fair opportunity has been given to both of them to prove their case, and at the end the Court has pronounced its judgment or decision. Such a decision pronounced by a Court of competent jurisdiction is binding between the parties unless it is modified or reversed by adopting a procedure prescribed by the Constitution.

13. Therefore, the principle that can be gathered from the above decisions of the Apex Court is that, the principle of *res judicata* does apply to writ petitions filed under Article 226 of the Constitution of India. Before a plea of *res judicata* can be sustained, either under the provisions of the Code of Civil Procedure or Article 226 of the Constitution of India, the following conditions must be satisfied, namely, (i) the parties to the suits/writ petitions (i.e., the former suit/writ petition and the subsequent suit/writ petition) or the parties under whom they or any of them claim must be the same in both the suits/writ petitions; the matter directly and substantially in issue must be the same either actually or constructively in both the suits/writ petitions; and the matter directly and substantially in issue in the subsequent suit/writ petition must have been heard and finally decided by a Court of competent jurisdiction in the former suit/writ petition.

14. In the case on hand, a bare reading of Ext. P7 judgment in WP (C) No. 24214 of 2013 leaves no manner of doubt that, in the said judgment this Court never declined the writ of mandamus sought for to appoint the writ petitioner to the post of Executive Director in CWRDM, either on the ground that he has no fundamental right as pleaded in that writ petition, or that there has been no contravention "of any such right, or that such contravention is justified by the Constitution itself. Further, in Ext. P7 judgment this Court has not finally decided the said issue raised in that writ petition. Instead, this Court set aside Ext. P4 Government order in view of the fact that it contains no cogent reasons to cancel the selection process, and disposed of that writ petition directing the President of the KSCSTE to take a decision within a period of one month from the date of receipt of a copy of the judgment, in the light of the discussions contained therein, after observing that, the President is free to dissent with the findings of the Selection Committee for any reasons legally sustainable. Therefore, I find

absolutely no merit in the argument advanced by the learned Standing Counsel for the KSCSTE that, the second relief sought for, namely, a writ of mandamus to appoint the writ petitioner to the post of Executive Director in CWRDM is not maintainable and is barred by the doctrine of *res judicata*.

15. Regarding the third relief, the learned Standing Counsel for the KSCSTE would contend that, the order of injunction sought for restraining the respondents from taking any steps to notify the post of Executive Director of CWRDM and to proceed further in the matter of appointment to that post has become infructuous since the KSCSTE has already published Ext. R3(a) notification dated 22/06/2015. The learned Standing Counsel would contend further that, the first relief sought for, namely, a writ of certiorari to quash Ext. P8 order dated 14/05/2015 passed by the KSCSTE has also become infructuous on publication of Ext. R3(a) notification. Relying on the judgment of the Apex Court in *S.P. Gupta v. Union of India* 1981 KHC 752 : 1981 Supp SCC 87 : AIR 1982 SC 149 the learned Standing Counsel would contend that, once it is found that the reliefs sought for have become infructuous, this Court cannot take upon itself a theoretical exercise merely for the purpose of deciding academic issues, however important that may be, and that, this Court cannot take upon itself the role of a commission of inquiry with a view to destroying evil wherever it is found.

16. A plain reading of the third relief makes it explicitly clear that, the injunction sought for is one for restraining the respondents from taking any steps to notify the vacancy in the post of Executive Director of CWRDM and to proceed further in the matter of appointment to that post. The second limb of that relief, namely, an order of injunction restraining the respondents from proceeding further in the matter of appointment to the post of Executive Director of CWRDM will not become infructuous on publication of Ext. R3(a) notification dated 22/06/2015. Similarly, the first relief, namely, a writ of certiorari to quash Ext. P8 order passed by the KSCSTE will also not become infructuous on publication of the said notification.

17. The present writ petition was filed before this Court on 22/06/2015, after serving a copy of the same to the learned Standing Counsel for the KSCSTE. On 23/06/2015 the learned Standing Counsel sought time for getting instructions and the case was adjourned to 29/06/2015. Going by Ext. R3(a), though the said notification is dated 22/06/2015, it was published in the *Deccan Chronicle* daily only on 24/06/2015. During the course of arguments, though the learned Standing Counsel for the KSCSTE would contend that, Ext. R3(a) notification was published in the official website of the KSCSTE even prior to its publication in the news papers, the date of such publication is not discernible from the pleadings already on record. At any rate, mere issuance of Ext. R3(a) notification will not stand in the way of this Court looking into the legality or otherwise of Ext. P8 order passed by the KSCSTE and also whether the writ petitioner is entitled for appointment to the post of Executive Director in CWRDM.

18. The judgment of the Apex Court in *S.P. Gupta's case* (*supra*) relied on by the

learned Standing Counsel for the KSCSTE is on an entirely different factual matrix. In the said case (also known as the Judges' Transfer case) a contention was raised as to the locus standi of the petitioners in those writ petitions which were originally filed before various High Courts and transferred to the Apex Court under Article 139 of the Constitution of India. During the pendency of the writ petitions, the affected persons were transposed as petitioners and it was in that factual matrix, the Apex Court held that, the contention about locus standi is now of academic interest and need not be dealt with. But, in the case on hand, since the first and third reliefs have not become infructuous on publication of Ext. R3(a) notification, I find absolutely no merit in the argument advanced by the learned Standing Counsel for the KSCSTE that, by proceeding with this writ petition, after the issuance of Ext. R3(a) notification, this Court is undertaking a theoretical exercise merely for the purpose of deciding academic issues.

19. Regarding the fourth relief, the learned Standing Counsel for the KSCSTE would contend that, though in paragraph 7 of the writ petition, the writ petitioner has disclosed the filing of the previous writ petition and produced Ext. P7 judgment, the affidavit accompanying the present writ petition contains a false statement that, he has not filed any petition before this Court seeking similar or identical reliefs on the same subject-matter and hence this writ petition cannot be entertained.

20. Chapter XI of the Rules of the High Court of Kerala, 1971 deals with proceedings under Articles 226 and 227 of the Constitution of India. Rule 145 deals with form of presentation of an application under Article 226 or under Article 227 or under both. Rule 146 deals with contents of the applications and Rule 150 deals with interim orders. As per Rule 146, every application shall set out the provision of law under which it is made, the name and description of the petitioner and the respondent, a clear and concise statement of facts, the grounds on which the relief is sought and shall be signed by petitioner and by his Advocate, if he has appointed one, as in Form No. 10. By Notification No. DI-52026/95 dated 18/07/1997, published in Kerala Gazette No. 42 dated 28/10/1997, a proviso was added to Rule 146 and as second proviso to Rule 150, which reads thus;

"Provided that no petition shall be entertained by the Registry unless it contains a statement as to whether the petitioner had filed any petition seeking similar reliefs in respect of the same subject-matter earlier and if so, the result thereof."

21. In *K.V. Marakkar Vs. State of Kerala*, (1998) 2 KLJ 705, a learned Judge of this Court noticed the mandatory nature of the provisos added to Rules 146 and 150 of the Rules of the High Court of Kerala and held that, as evident from the provisos added to Rules 146 and 150, it is mandatory on the part of the petitioner to make a statement in the Writ Petition as to whether he had filed any petition seeking similar reliefs in respect of the same subject-matter earlier and if so the result thereof. A similar statement has also to be made in the interim petition as well, if interim relief was sought for earlier, and the result thereof. The

learned Judge noticed that, in the affidavit filed along with the earlier writ petition, it was stated that, "the petitioner has not filed earlier petitions seeking similar and identical reliefs in respect of the same subject-matter". However, in the affidavit filed along with the subsequent writ petition, it was stated that, "the petitioner has not filed earlier for disposal of Exts. P1 and P2 pending before the Government". The petitioner has not stated as to whether he had filed any petition seeking similar reliefs in respect of the same subject-matter earlier, and if so, the result thereof. It was after noticing the fact that, the petitioner has not stated, either in the body of the writ petition or in the affidavit, of the filing of the earlier D. P. or C. M. P. and the result thereof, this Court held that, there is complete suppression of those facts in the subsequent writ petition and the failure to state in the affidavit of the filing of OP No. 13991 of 1998 and CMP No. 24691 of 1998, and the result thereof, is an abuse of process of Court.

22. Following the decision in K.V. Marakkar's case (supra), a Division Bench of this Court in District Collector, Palakkad Vs. Devayani, (2001) 3 ILR (Ker) 491 held that, the nondisclosure of the institution of the prior writ petition for the same reliefs is an abuse of process of Court. In that case, the Division Bench noticed that, challenging the very same revenue recovery proceedings first respondent therein had approached this Court by filing OP No. 1201 of 1999 raising identical contentions. In that writ petition she obtained an interim order on 15/01/1999 and got the same extended from time to time. By order dated 24/06/1999 this Court restricted the stay till 30/06/1999. On 05/07/1999 this Court again extended the stay on condition of remitting Rs. 2 lakhs within one month from that date. On 12/08/1999 this Court extended the time for remittance of the amount by one week and since the same was not remitted even within the extended time, on 20/08/1999 stay was not extended as the amount was not paid. Subsequently OP No. 1201 of 1999 was dismissed on 11/02/2000 as not pressed. The Division Bench noticed further that, while filing the subsequent writ petition, the fact that she had filed OP No. 1201 of 1999 was suppressed and it has been specifically stated that she had not filed any writ petition before this Court seeking identical reliefs based on similar cause of action. Therefore, the Division Bench, following the view expressed by this Court in K.V. Marakkar's case (supra) that, the proviso added to Rules 146 and 150 makes it mandatory on the part of the petitioner to make a statement in the writ petition as to whether he had filed any petition seeking similar reliefs in respect of the same subject-matter earlier and if so the result thereof, concluded that the first respondent therein has not disclosed the fact that she had earlier filed a writ petition and that was dismissed as not pressed, which is nothing but an abuse of process of Court.

23. In Siddique Vs. District Collector, (2006) 3 ILR (Ker) 731 a learned Judge of this Court, following the decisions in K.V. Marakkar's case (supra), and Devayani's case (supra) has held that, it is a fundamental principle of law that, a person invoking prerogative remedy must come with clean hands and should make a full and candid disclosure of all material facts. Whether the petitioner had

filed an earlier writ petition seeking similar reliefs is a matter, relevant and material in a later writ petition. He shall not suppress it. Such suppression is a jugglery which has no place in equitable and prerogative jurisdiction. It was a case in which, the fact that the petitioner had filed WP (C) No. 3483 of 2006 was not pleaded or brought to the notice of this Court in the subsequent writ petition, namely, WP (C) No. 5564 of 2006. On a random check in the registry of this Court under the oral instructions of the learned Judge, it was traced out that the petitioner had filed WP (C) No. 3483 of 2006, which came up on 06/02/2006 and, for the learned Government Pleader to seek instructions from the officials, was adjourned to 08/02/2006. On 08/02/2006, the learned counsel for the petitioner submitted that the District Collector has already passed orders against the petitioner without hearing him. Accordingly, this Court posted that case on 10/02/2006, wanting the learned Government Pleader to get instructions, whether, in fact, any order has been passed by the District Collector, as alleged by the petitioner and if any order was passed, the learned Government Pleader to produce a copy of that order. That case was then adjourned to 15/02/2006 at the request of the Government Pleader, on which day, it was adjourned to be posted when moved again. Thereafter, the petitioner filed WP (C) No. 5564 of 2006. But, the fact that the petitioner had filed such an earlier writ petition was not pleaded or brought to the notice of this Court in WP (C) No. 5564 of 2006.

24. In Siddique's case (supra) this Court held that, the proviso to Rule 146 and 150 of the Rules of the High Court of Kerala are not framed with reference to cause of action. So much so, whatever be the different causes of action, when a person seeks relief in relation to a subject-matter which was subjected to an earlier writ proceedings and if the later petition seeks relief similar to that sought for in the earlier petition, he is bound to disclose the same. The learned Judge noticed that, a reference to WP (C) No. 3483 of 2006 will show that it was filed seeking to quash the proceedings pursuant to the detention of the vehicle of the petitioner on ground that it was carrying unauthorised sand, though the said writ petition was filed, allegedly, before being served with what is produced as Ext. P2 in WP (C) No. 5564 of 2006, wherein the petitioner seeks nothing but the quashing of the decision contained in that document. In such circumstances, this Court held that, the suppression of WP (C) No. 3483 of 2006 in WP (C) No. 5564 of 2006 is uncalled for as such disclosure was required in terms of Rule 146 of the Rules of the High Court of Kerala.

25. As I have already noticed, by Notification No. DI-52026/95 dated 18/07/1997, published in Kerala Gazette No. 42 dated 28/10/1997, a proviso was added to Rule 146 and as second proviso to Rule 150. The "explanatory note" to Notification No. DI-52026/95 dated 18/07/1997 reads thus;

"From the various petitions filed before the Court, the High Court had occasion to notice that the petitioners do not disclose the filing of petitions seeking similar or identical reliefs, in respect of the same subject-matter, earlier. The High Court has decided that, provisions have to be incorporated in the Rules of the High

Court of Kerala insisting that every petitioner should state that he has not filed earlier, petitions seeking similar and identical reliefs, in respect of the same subject-matter."

26. In the case on hand, in paragraphs 7 and 8 of the writ petition, the petitioner has disclosed in detail the earlier writ petition filed before this Court in respect of the same subject-matter and also the interim order and judgment passed therein. A copy of the interim order and the judgment in WP (C) No. 24214 of 2013 are also produced along with the present writ petition as Exts. P6 and P7. Since the petitioner has disclosed the filing of the earlier writ petition in respect of the same subject-matter and also the result thereof, in paragraphs 7 and 8 of the writ petition and produced copy of the interim order and judgment as Exts. P6 and P7, it cannot be contended that, the present writ petition do not disclose the filing of earlier writ petition, namely, WP (C) No. 24214 of 2013 seeking similar or identical relief. When the filing of the earlier writ petition is disclosed in the subsequent writ petition in detail along with copy of the interim order/judgment in that writ petition, the writ petitioner cannot be non-suited merely for the reason that, the affidavit accompanying the present writ petition contains a statement that, the writ petitioner has not filed any petition before this Court seeking similar or identical reliefs on the same subject-matter. For an inadvertent mistake committed by the Counsel while drafting the affidavit accompanying to the writ petition, the writ petitioner cannot be non-suited, especially when the filing of the earlier writ petition is disclosed in detail, along with copy of the interim order/judgment in that writ petition. Therefore, I find absolutely no merit in the argument advanced by the learned Standing Counsel for the KSCSTE that, the present writ petition cannot be entertained.

27. In the result, I find absolutely no merits in the contentions on the question of maintainability of the writ petition raised in IA No. 9769/2015, which are totally devoid of any merits and therefore, the said interlocutory application can only be dismissed, thereby holding that the writ petition is not liable to be dismissed on the question of maintainability.

28. Before leaving this issue it needs to be mentioned that, no procedural law could achieve its basic need of expeditious disposal, which has always been the legislative intent, if such procedure is abused by any party to the litigation. If frivolous objections of the present nature, on maintainability of the writ petition, are permitted to be raised it would unnecessarily prolong consideration of the interim prayer sought for in the writ petition and even the final disposal of the writ petition, which would certainly amount to putting a premium on abuse of process of law. Though the provision of procedural law has to be construed liberally to achieve the ends of justice, but no party to the litigation can ever be allowed to abuse the process of law. The procedural law is not intended to give an edge to a party over the other by adopting delaying tactics by raising the question of maintainability, on grounds which are totally devoid of any merits, and insisting that this Court should decide the question of maintainability before

proceeding with the writ petition on merits. Once it is found that, the contentions regarding maintainability of the writ petition raised are totally devoid of any merits, the application seeking an order to consider the question of maintainability as a preliminary issue, deserves to be dismissed with exemplary cost, for abusing the process of law. But, in the facts and circumstances of the case, taking a lenient view, IA No. 9769/2015 is dismissed with a cost of Rs. 5,000/- which the petitioner in this IA (3rd respondent in the writ petition) shall pay to the Kerala State Legal Services Authority, which is a statutory body providing free legal aid to weaker sections of the Society, within a period of two weeks from the date of this order.

It is made clear that, the observations, if any, made in this order touching the merits of the case are intended only for the limited purpose of disposing of this interlocutory application.

Hand over copy to both sides.