

(2021) 08 KL CK 0176
In the High Court Of Kerala
Case No : Writ Petition (C) No. 6867 Of 2020

Sunilkumar Nair

APPELLANT

Vs

Director Of Vigilance And Anti-Corruption Bureau

RESPONDENT

Date of Decision : 27-08-2021

Acts Referred:

Code of Criminal Procedure 1973 — Section 190, 200
Prevention of Corruption Act, 1988 — Section 17A

Citation : (2021) 08 KL CK 0176

Hon'ble Judges : R. Narayana Pisharadi, J

Bench : Single Bench

Advocate : C.S.Manu, S.K.Premraj, A Rajesh

Final Decision : Dismissed

Judgement

R.Narayana Pisharadi, J

1. The writ petitioner is said to be a member of the Pullad Service Co-operative Bank (hereinafter referred to as 'the Bank').
2. The petitioner made Ext.P1 complaint dated 25.01.2020 to the first respondent, the Director of the Vigilance and Anti-Corruption Bureau (VACB), regarding commission of the offences of misappropriation, forgery and falsification of accounts by the Secretary of the Bank.
3. The grievance of the petitioner is that the first respondent, though he was bound to conduct an enquiry or investigation into the offences alleged against the Secretary of the Bank, either by himself or through his subordinate officers, has not taken any such action and that the first respondent has failed to discharge his statutory duties.
4. The petitioner seeks the following reliefs in this writ petition.

â??(i) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the 1st respondent to take up, consider and pass orders on Ext.P-1

complaint, conducting enquiry or investigation either by himself or through any of his subordinate officers forthwith and to lay the report thereof before the competent court or authority.

(ii) Allow the cost of the petition to the petitioner.

(iii) Grant such other and further reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case.â??

5. The Inspector of Police, VACB, Central Range, Ernakulam has filed a report in the writ petition. It is stated in this report as follows:

It is respectfully submitted that the petitioner has filed two petitions before the Director, Vigilance & Anti-Corruption Bureau, Thiruvananthapuram on 04-01-2020 and 25-01-2020 respectively. On 04-02-2020 the Director has forwarded the above

petitions along with letter No.CPSP-1-463/2020/DVAC to the Additional Chief Secretary, Vigilance Department, Government Secretariat, Thiruvananthapuram to enquire the matter through the Vigilance wing of the Co-operative Department.â??

6. Subsequently, the Superintendent of Police (Intelligence), VACB filed a report dated 13.07.2021 on behalf of the first respondent. In this report, it is stated as follows:

1. It is submitted that the petitioner in this W.P.(C) Shri.Sunil Kumar Nair filed two petitions to the Director, Vigilance and Anti-Corruption Bureau, Thiruvananthapuram on 04/01/2020 and 25/01/2020. Since the allegation is related to the irregularities in Pullad Service Co-operative Bank, it has been decided to forward the petitions to the Government for appropriate action through concerned department.

2. As per GO(P) 09/2017/Vig dated 29-03-2017 vide Para iv, the petition which have no vigilance angle or those which do not disclose offences under the PC

Act 1988 which need to be dealt with the department concerned, will be forwarded to Vigilance Department in Government for appropriate action.

3. In the instant case as envisaged in the GO cited the petitions of Shri.Sunil Kumar Nair have been forwarded to Government on 04/01/2020 and 25/01/2020 as

the irregularities falls under Kerala Co-operative Act. Before commencing an enquiry on the petition, the VACB has to ensure whether the concerned department

had conducted any internal enquiry on the same allegation or not. If there is no internal enquiry initiated, then the matter can be referred to the Government for appropriate action as per the GO discussed. Otherwise the Director can close the matter in which no vigilance angle or offence reveals under PC Act.â??

7. Though it is not specifically stated, what is discernible from the above report is that the Director, VACB had formed an opinion that Ext.P1

complaint did not reveal commission of any offence under the Prevention of Corruption Act, 1988 but only irregularities in the Bank and therefore, the complaint was forwarded to the department concerned.

8. Heard learned counsel for the petitioner and the learned Public Prosecutor.

9. Learned counsel for the petitioner contended that, on receiving Ext.P1 complaint containing allegations regarding commission of cognizable offences

by a public servant, the first respondent was bound to conduct an enquiry or investigation into the matter either by himself or through his subordinate

officers. Learned counsel would contend that, on getting information of the commission of any cognizable offence, the police is bound to register first

information report (FIR) and conduct investigation. Learned counsel has also contended that, mere existence of an alternative remedy, shall not be a

ground for not entertaining the writ petition.

10. Learned Public Prosecutor has invited the attention of this Court to the copy of the Government Order, G.O(P)No.09/2017/Vig dated 29.03.2017,

issued by the Government with regard to the guidelines to be followed by the VACB on receipt of a complaint. On a perusal of the guidelines

contained in the above Government Order, it appears that many of those directions run counter to the principles of law laid down by the Constitution

Bench of the Supreme court in Lalita Kumari v. Government of U.P : AIR 2014 SC 187. However, this Court finds it not necessary to delve deep in

that regard in this writ petition. Moreover, the above Government Order, being issued prior to the amendment of the Prevention of Corruption Act,

1988 does not address the procedure to be followed under Section 17A of the Act.

11. But one thing is significant. This Government order shows that the Directorate of VACB which had been notified as a police station as per

Notification No.10058/C1/2000/Vig dated 14.12.2000, is no longer a police station (with effect from 08.05.2015).

12. What is the remedy of a person on inaction on the part of the police on the information given by him regarding the commission of a cognizable

offence? Is it his remedy to rush to the High Court and to file a writ petition seeking action on the complaint given by him to the police?

13. When information with regard to the commission of any cognizable offence is laid with the police but no action in that behalf is taken, the

complainant/aggreived person has right under Section 190 read with Section 200 of the Code of Criminal Procedure to lay the complaint before the

Magistrate having jurisdiction to take cognizance of the offence. Instead of adopting or availing that procedure, he is not entitled to approach the High

Court by filing a writ petition and seeking a direction to conduct investigation into the complaint filed by him before the police (See All India Institute of

Medical Sciences Employees Union v. Union of India: (1996) 11 SCC 582, Aleque Padamsee v. Union of India:(2007) 6 SCC 171, Sakiri Vasu v.

State of U.P : AIR 2008 SC 907, Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage : (2016) 6 SCC 277 and M. Subramaniam v. S. Janaki :

(2020) 16 SCC 728).

14. Lalita Kumari (supra) does not hold that a person aggrieved by the inaction of the police can take a straight recourse to judicial review, without

availing the remedies under the Code of Criminal Procedure (See Fr. Sebastian Vadakkumpadan v. Shine Varghese (2018 (3) KHC 590).

15. The entire law on the question has been discussed and answered by this Court in Jude Joseph v. Director General of Police (2021 (3) KHC 441).

16. The anguish expressed by the Supreme Court about the High Courts being flooded with these types of writ petitions cannot be lost sight of. The

petitioner is not entitled to get any relief in this writ petition.

Consequently, the writ petition is dismissed.